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COMMITTEE ON JUDICIARY

March 2, 2005

LB 660, 674, 50, 409, 617, 620

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 2, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB660, LB 674, LB 50, LB 409, LB 617, LB 620 and confirmation hearings of Charles Brewster, Crime Victims Reparation Committee and William Brueggemann, Crime Victims Reparation Committee. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Ernie Chambers.

SENATOR BOURNE: We're going to go ahead and start the committee now. Welcome to the Judiciary Committee. This is our 17th day of hearings. We're hearing seven bills today as well as two confirmation hearings. My name is Pat Bourne. I'm from Omaha. To my left is Senator Aguilar from Grand Island. The committee clerk is Laurie Vollertsen. Legal counsel is Michaela Kubat. Senator Foley from Lincoln, and Senator Dwite Pedersen from Elkhorn. I'll introduce the other members as they arrive. Please keep in mind that senators will come and go throughout the afternoon so if they happen to leave to go introduce a bill or take care of some other legislative business while you're testifying, please don't take that personally. They're simply conducting other business. If you plan to testify on a bill we're going to ask that you use these two on-deck areas or these two on-deck chairs. And we'll have you sign in. Please print your name so that it's readable and can be entered into the permanent record. Following the introduction of each bill I'll ask for a show of hands to see how many people plan to testify on a particular measure. We'll first hear the proponents, then the opponents, and then if there are any neutral testifiers we'll take those last. When you come forward to testify, please clearly state and spell your name for the record. All of our hearings are taped and transcribed and the transcribers would very much appreciate the spelling of your name. Due to the large number of bills heard in the Judiciary Committee we utilize a timing light system. I refer to that as the Kermit Brashear Memorial Lighting System (laughter). Senators introducing a bill have five minutes to open and three minutes to close if they choose to do so. All other testifiers get three minutes to testify exclusive of any

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questions the committee may ask you. The blue light will go on at three minutes. The yellow light comes on as a one-minute warning and then when the light turns red we ask that you conclude your testimony. The rules of the Legislature state that cell phones are not allowed so if you have a cell phone please disable it so it does not ring and disturb those folks who are testifying. Reading someone else's testimony is not allowed. However, if you do have a letter from a group or another individual, we'll allow you to submit that and we'll include that as part of the record but we won't allow you to read it. With that, our first confirmation hearing this afternoon is Charles Brewster, Crime Victims Reparation Committee. Mr. Brewster is unable to be here this afternoon so Senator Cudaback is going to speak on his behalf. The committee does have a letter from Mr. Brewster. That will be entered into the record. Senator Cudaback, welcome.

CONFIRMATION HEARING ON
CHARLES BREWSTER TO THE
CRIME VICTIMS REPARATION COMMITTEE

SENATOR CUDABACK: Honorable Chairman and members of the Judiciary Committee, I'm Jim Cudaback and I'm here today to introduce Charlie Brewster. He doesn't need to be introduced. You have a letter. I won't take up your valuable time and so I would just simply say, read the letter. He served on the commission since 2000. He'd like to be reappointed to the Nebraska Crime Commission along with Crime Victims Committee and all I can say is Charlie is a good man. He served as county attorney when I was on the county board in Buffalo County. We got along real well and he's a fine person. He's an attorney as well, whatever but, anyway, he'd like to be reappointed and I'm here to say you couldn't find a better person to do the job (See also Exhibit 1).

SENATOR BOURNE: Thank you. We appreciate you speaking on Mr. Brewster's behalf. Are there any questions for Senator Cudaback? Senator Foley.

SENATOR FOLEY: Did you say he was an attorney?

SENATOR CUDABACK: Sorry, I'll retract that. He is.

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SENATOR FOLEY: Thank you.

SENATO. CUDABACK: He is. Thank you. For the record, he is.

SENATOR BOURNE: Further questions? Seeing none, thank...

SENATOR CUDABACK: He was the county attorney. He is no longer. Excuse me, he was the county attorney.

SENATOR BOURNE: Seeing no further questions, Senator Cudaback, thank you.

SENATOR CUDABACK: Thank you.

SENATOR BOURNE: We've been joined by Senator Friend from Omaha and Senator Combs from Milligan. Are there any testifiers in support of this appointment? Testifiers in opposition? Are there any neutral testifiers on this appointment? That will conclude the confirmation hearing for Charles Brewster and now we will have a confirmation hearing on William Brueggemann. Welcome.

CONFIRMATION HEARING ON
WILLIAM BRUEGGEMANN TO THE
CRIME VICTIMS REPARATION COMMITTEE

WILLIAM BRUEGGEMANN: Thank you. My name is William Brueggemann, B-r-u-e-g-g-e-m-a-n-n. I'm here for reconfirmation for appointment on the Crimes Victims Reparation Committee. I've served on this committee and the Crime Commission since 2000. Since that time I believe I've been an asset. I worked with Mr. Brewster who's our chairman on this committee. I've been an asset to the committee. I think the committee is very helpful in the state of Nebraska even though there's some problems with limited funding. I think if we can work some of this out that we can continue to be an asset in Nebraska. And I would ask for your approval to be reappointed.

SENATOR BOURNE: Thank you. Are there questions for Mr. Brueggemann? Senator Foley.

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SENATOR FOLEY: Thank you for coming today. I don't know as much as I probably should about this committee. How often do they meet?

WILLIAM BRUEGGEMANN: We meet once a quarter, four times a year. What we do is the chairman of the Crime Commission, executive director of the Crime Commission has a hearing with these victims and determine whether or not they are entitled to or not entitled to an award for the crime that's been committed against them being an innocent victim. As the committee then, these people have the opportunity to ask for another hearing if they're denied and then it comes in front of ourselves and we sit and we listen to the testimonies and the evidence and look over the reports to determine if there had been an error, why they are appealing it and so we go through it again with the victim to determine whether or not there should be an award there. Where we're at now there's...and I'm sure you're familiar with some of the funding, we've had to limit ourselves, for instance. We now will not hear any appeals on assault cases. The statutes require that we meet but it gives us a little bit of flexibility and because of the limited funding we're not able to award funds for everything. The biggest problem probably is we award funds but the funds aren't there and truly I believe that it's an asset for the people but I think sometimes we're actually victimizing these people twice when they're coming in. And so it's a long-term commitment that we have to figure out how to resolve.

SENATOR FOLEY: When that occurs do we eventually catch up with these people when some funding becomes available or how does that work?

WILLIAM BRUEGGEMANN: We're supposed to. We have limitations now. For instance, so much on hospital bills or for a funeral so we have limitations what we can award. I believe and I don't have the numbers in front of me. I think we've already used the majority of the funding for this fiscal year and so what happens is we tell these people, we do feel that you should be awarded this money and tell them the dollar amount and calculate the dollar amount. However, there's no money available and it's a shame because you have people sitting in here crying and you don't have an answer for them. I'm just a committee member and I know

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it's getting off a little bit but I think we either need to revise the statute, get rid of the statute if we're going to fund it or we need to sit down and work on funding, one of the other, because it's not doing justice for the citizens of Nebraska.

SENATOR FOLEY: When the people initiate the process are they aware that there's no money there?

WILLIAM BRUEGGEMANN: I don't believe that the initial, no. I think they're usually again, the assumption, I believe, that they're advised by an attorney or a friend or sometimes some of your violence advocates. Some stuff, will say here's an option for you. I know you don't have money to pay for the funeral of your son who was killed in an armed robbery. But you can go through this hearing and they award money if they feel fit. It doesn't...so when they go to and talk to the executive director and have their first initial hearing, I don't know if he actually tells them that there's no funds available. I believe he would probably tell them there's limited funds, take it under advisement. We'll find out how much you're entitled to. When they come to us, if they appeal his decision, for instance, if he denies it, I don't believe they know at that time that there's no money there or very little money.

SENATOR FOLEY: As a committee member perhaps there's something that you as an individual committee member or the committee as a whole could do to alert people that when they enter into this process they should be told up front. Because I agree with you, you're victimizing them again to put them through all this and then say, well, you win. But guess what? There's no money.

WILLIAM BRUEGGEMANN: I think there is a way. And we try to without victimizing them right there on the spot, try and casually lead into saying, you know, we'll look this over. We'll get back with you within ten days and see what money can be awarded. And I believe in that letter we tell them that some come in there thinking that we'll pay \$200,000 for something that's not covered. So they have no knowledge going into the original hearing. So then, I know, we sit down and we tell them we only cover a certain percentage of medical bills. We only cover a certain percentage of the funeral. And a lot of times we have to go back in there and

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explain to them that they to be free of culpability. They cannot be involved, the victim cannot be involved in this at all to be awarded for this or to be considered for it. I agree. They need to somehow casually be told. You know, I told you my two options. The best way I can figure is we need to, and I believe in the committee. I believe we can help these victims. We either need to fund it or we need to have somebody enter a bill and get rid of it.

SENATOR FOLEY: When you do have monies where do they come from?

WILLIAM BRUEGGEMANN: I believe they come out of the General...you probably know more than I. There is no appropriations, I believe, for that, I mean, as far as ongoing so every year and it's getting smaller and smaller. Not having numbers in front of me, I'm guessing we're running on 40 percent what we did four years ago. And that's an assumption but I know it's gone down quite a bit. I know that LB 93, I believe, which I don't think was received real well was one of those that for continued funding. Is that the right one? I don't know. I know a lot of other states use it. There's...you know, you've got five people on that committee that would...and I heard somebody talking the other day, let's just take all the senators out for a big barbecue and get something together, everybody's ideas. There's got to be a way to help these victims. And on our own, we can't do it. We write letters left and right and saying the statute says that Nebraska will provide funding. But if there's no funding there, it's kind of hard and there's a lot on your shoulders of trying to come up with it so.

SENATOR FOLEY: Yeah, thank you. That's very helpful to me.

SENATOR BOURNE: Further questions? Seeing none, thank you.

WILLIAM BRUEGGEMANN: Thank you.

SENATOR BOURNE: Appreciate you coming down. Are there testifiers in support of this confirmation? Testifiers in opposition? That will conclude the confirmation hearing on William Brueggemann. Senator Price to open on LB 660. As she makes her way forward, can I get a show of hands of those here to testify in support of this next measure? I

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see two. Those in opposition? I see two. Those neutral? I see none. Again, as the proponents if they would make use of the on-deck area there and sign in. Welcome, Senator Price.

LB 660

SENATOR PRICE: Chairman Bourne, members of the Judiciary Committee, I am Senator Marian Price. I represent the 26th Legislative District and I introduce this bill at the request of the Nebraska Secretary of State. My name is spelled M-a-r-i-a-n P-r-i-c-e. The purpose of LB 660 is to require the licensure of home inspectors. Home buyers and real estate agents are increasingly reliant on home inspectors when purchasing real property. Currently, anyone may hold themselves out as a home inspector. There is no state regulation. This bill would set up minimum standards requiring home inspectors to be licensed, trained, and hold insurance. This bill in no way regulates when a home inspection shall take place. It simply regulates those who perform home inspections. LB 660 creates the Home Inspector Licensing Board. This board will create licensing procedures, adopt a code of ethics, develop a licensure exam and hold the power to suspend or revoke a license. The Secretary of State's Office will administer the act. Testimony from the Secretary of State's Office will explain in greater detail the reason for this bill and how it will be administered. A similar version of this bill, LB 767, was introduced last year by Senator Bourne at the request of the Nebraska Secretary of State. There were a few issues that still needed to be worked out and I believe this version has a lot of support. I thank you for your time and I will close when testimony concludes. Are there any questions? (See also Exhibit 20)

SENATOR BOURNE: Thank you. Are there questions for Senator Price? Seeing none, thank you. First testifier in support.

NEAL ERICKSON: Senator Bourne, members of the Judiciary Committee, my name is Neal Erickson, deputy secretary of state for elections, actually. For the record it's N-e-a-l E-r-i-c-k-s-o-n. Here testifying in support of LB 660 on behalf of Secretary of State Gale. Unfortunately, he could not be here today because he's doing Statehood Day duties in

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Omaha today. I do have a letter from Secretary Gale for the committee. I would also like to thank Senator Price for introducing this bill on our behalf. I think Senator Price kind of gave a rough overview of it. Generally, I think the description of what a home inspection process is is a process by which a home inspector examines readily observable components from improvements to residential and real property that are readily accessible. What this bill would do is create a five-member home inspector licensing board consisting of the secretary of state and four members appointed by the governor for four-year terms. We view this bill as not only necessarily an industry licensing act but also consumer protection act to a degree. The board's duties include adopting a code of ethics and standard for home inspectors, ruling and disciplinary actions, developing a licensing exam, et cetera. The secretary of state's office would house this licensing board. We already do that in certain areas such as polygraph examiners, private detectives, notaries, collection agencies. General license qualifications would include completion of high school, at least 21 years of age, and completing at least 60 hours of study or training and pass the exam. Licensees would have to carry proof of \$250,000 in general liability insurance as well as a \$50,000 surety bond. Licensing fees would be established at a level to keep the agency going in effect but would be capped at \$250 for both the licensing fee and then also the examination fee. The fiscal note on this is \$21,000 as estimated by our office which would include a half-time administrative person to handle the duties of that board. I think the reasons for this committee is that performing home inspections without a license would be a Class 1 misdemeanor and with that I'd answer any questions you might have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Erickson? Seeing none, thank you.

NEAL ERICKSON: Thank you.

SENATOR BOURNE: Next testifier in support.

JOHN EGGENBERG: My name is John Eggenberg. I am the current president of the Greater Omaha American Society of Home Inspectors. ASHI as it's called is the largest and oldest organization for home inspectors.

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SENATOR BOURNE: Could you spell your last name for us?

JOHN EGGENBERG: It's E-g-g-e-n-b-e-r-g.

SENATOR BOURNE: Thank you.

JOHN EGGENBERG: The general consensus in the more populated area, Omaha, Lincoln, and even over into Iowa which doesn't apply to this hearing, I know, we all feel that a licensing bill would be good for the consumer. We're all full-time home inspectors in our group and we do see a lot of cases where anyone can say they're a home inspector. Any of you could put an ad in the Yellow Pages this month and say you're home inspectors. We are concerned with the testing which will be set by the board, I guess, the testing and the education. ASHI has developed a psychometrically approved test called the National Home Inspectors Examination. It's currently being used by 15 other states that deal with licensing. I just wanted to make our group's feelings known that we're in favor.

SENATOR BOURNE: Thank you. Are there questions for Mr. Eggenberg? Seeing none, thank you. Any further testifiers in support? First testifier in opposition. Did you sign in, sir?

RANDY KING: Yes, I did.

SENATOR BOURNE: Okay, thank you. If there's other testifiers in opposition or in a neutral capacity, if you'd make your way forward to the on-deck area and sign in I'd appreciate it. Welcome to the committee.

RANDY KING: (Exhibit 3) Thank you. Senator Bourne, Senators, my name is Randy King, R-a-n-d-y K-i-n-g. I've owned and operated King's Home Inspections for the last eight years. I serve southeast Nebraska especially Lincoln, Beatrice, Fairbury, et cetera. I am in opposition to this bill in its present form. I've prepared a summary of my concerns that is being handed out to each of you. I'll only highlight some of those. In the present form, there's no definition of what "educational home inspector and equivalent" requirements will be. Standards could be placed in here that would exclude all but formal training that's

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similar to the national franchises. The initial requirements of participating in an approved course of over 60 hours of instruction becomes a barrier to qualified people wishing to become a home inspector as cost of such a course is prohibitive especially to the part-time or perhaps semi-retired inspector in less populated areas of the state. It mostly affects those in the rural areas. If these inspectors cannot comply with LB 660's requirements and are forced to stop providing inspections who will do the work? Will an inspector from Omaha or Lincoln travel to Crofton or Blue Hill? One from North Platte go clear up to Valentine? It's not cost effective. With the increased expense of licensing, coursework, national testing, et cetera, and the ever escalating costs of insurance the feasibility of having a business like this in a smaller area is not good. If they do, the cost of the inspection comes so high that the prospective home buyer cannot hire it done. And that's the sad part for the clients who benefit the most are the ones who can afford it the least. The single mom, the first-time home buying couple, the person trying to reestablish after a divorce, those trying to buy a home under \$100,000. Why criminalize those who aren't licensed? Why not allow those who are licensed to promote their licensure as part of their qualifications in marketing? For example, those who are currently members of ASHI or NAHI advertise that fact on their literature and promotional materials. It gives them credibility and the realtors' and clients' confidence in their capabilities. You have to meet minimum standards to participate in those trades organizations including ethics tests, et cetera. Home inspectors in Nebraska have a good track record. Our main client is the realtor. It is his or her client that's the end consumer but my market is the realtor to a lesser extent, mortgage brokers. It only takes screwing up a home inspection about once or twice and a realtor doesn't use you anymore. And the realtors, it's a highly competitive market out there. By the very nature of our business, we are self-policing. You build a reputation quickly, good or bad, and if it's bad you don't stay in business very long especially not trying to cover costs of E&O insurance, liability insurance, et cetera. Please do not pass this legislation in its present form. Let's adopt training and testing that's already available on a national basis and create an entry for those who are semi-retired or who wish to pursue this on a part-time basis especially in rural areas of the state. Continuing education is a great

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idea and a good inspector endeavors themselves of that already. Let's find a way to protect the public and regulate this unfolding industry in a way that isn't prohibitively restrictive and costly. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. King? Mr. King, it seems like your biggest concern is that there might be some sort of a training program by one of these national agencies that you or other individuals would be compelled to go through. Is that...

RANDY KING: That is a concern certainly and I'm afraid that that's cost prohibitive especially to the person who wants to provide a home inspection service in the rural or less-populated areas of the state. From a business standpoint, it isn't cost-effective by the time you carry liability insurance and E O insurance and all the overhead. Many areas of the state simply don't have the volume of home sales not like Lincoln and Omaha that can afford to support an inspector on a full-time certainly basis. Many of them do that on a part-time basis and they're good qualified people. A former building maintenance man, you know, electricians that are semi-retired or whatnot, just by using some of the national testing and programs that are already in existence through ASHI or NAHI. One can test and qualify to become a qualified inspector and provide that service.

SENATOR BOURNE: Have you heard stories of individuals who put themselves out as or present themselves as home inspectors but yet aren't qualified to do that and, as a result, homeowners have suffered harm due to the...?

RANDY KING: I've heard of that. In the eight years I've been in business I've heard of that twice in Lincoln and once in Beatrice and those people didn't last very long. They were out of business in a very short time. Probably 80 percent of my business comes from realtors and mortgage brokers, bankers not general public. And, you know, realtors are my lifeblood. If I don't get good referrals from my realtors, if I'm not, you know, doing the reports right and getting them in on time, providing a professional product they don't use me again and the word travels fast amongst that bunch and you're out of business. You can't afford to stay in business.

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SENATOR BOURNE: Further questions? Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. King, thanks for the, I mean, it's informative. You know, what if I was a, you know, real decent carpenter, handyman, and I said, I know a lot of realtors. I said, I'm getting into this business. I mean, I want to...I guess I'm a little bit perplexed. What would it take for me and considering that I am a, you know, handyman or I understand all these issues. I know what, you know, what a good furnace looks like. I know what a bad situation in a house, you know, is. Why, I mean, how difficult would it be for me. What do I, apply for an LOC, I mean, I go get an LOC and hang up a shingle and then I'm competing with you? I mean, is it that simple?

RANDY KING: Well, conceivably, yes. Practically, no. Where is your market? Who are you going to market your service to? Your primary market is your realtors. Again, you have to be able to provide a product and a service at a level of competency that is easily recognized within the realty industry, by your underwriters that's your mortgage companies, et cetera. Almost any inspector follows the ASHI or NAHI standards. They're not that high, frankly. And to provide a good quality written report, you know, it's a combination of narrative check-off, et cetera. Yes, you could initially get started that way but you're not going to last long. The first time you miss a cracked heat exchanger on a furnace, the first time you miss aluminum wiring in an electrical panel, you know, there's lawsuits, liabilities, et cetera. I'm not opposed to licensing. I'm just opposed to this bill in its current form. Okay, I think that there are national standards and trainings that are out there already available that we could avail ourselves of and simplify this thing a lot.

SENATOR FRIEND: Yeah, well, thanks. I guess the thing is I just almost...the reason I was a little perplexed is I see it as almost protection for people that do the job that you do and do it well. So I understand what you're saying and I appreciate the time.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Mr. King, is there a lot of competition in your field?

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RANDY KING: Yes, it is a fairly competitive field. The greater Omaha area that serves mainly Omaha, far eastern Nebraska, probably has between 80 and 90 full-time...well, 80 and 90 inspectors. Probably 30 of those are full-time, I would guess. In the Lincoln area, there are about a dozen companies, maybe 15 and probably 7 or 8 of those could be qualified as truly full-time where that's basically all you do. Across greater Nebraska, full-time inspectors are pretty sparse. A lot of it is part-time people who are like building maintenance people or qualified, you know, contractors or whatnot that started this as a sideline business. And while I understand the desire for regulation to protect the public and to provide uniformity guidelines for minimum standards for people to adhere to, I believe that the mechanisms for it are already in place. No offense but to me the bill just seems like overkill.

SENATOR Dw. PEDERSEN: Would the passage of a bill like this eliminate some of the competition?

RANDY KING: Very much so especially in the rural areas of the state, especially the smaller operator. By the time you factor in, it's a \$500 fee in this bill up-front just to get licensed and the costs of continuing education, the 60 hours coursework that's asked for in here, et cetera. That's going to be prohibitive certainly to anybody who wants to do this on a part-time basis, travel, transportation, lodging, et cetera to complete that education requirement. It pretty much eliminates anybody from coming into this field except those going through like a national franchise type training program if you were to, you know, franchise out with one of the national operations. That concerns me.

SENATOR Dw. PEDERSEN: Thank you for your testimony.

RANDY KING: Thank you.

SENATOR BOURNE: Thank you. Further questions? Mr. King, I just need to follow up a little bit.

RANDY KING: Sure.

SENATOR BOURNE: I have some familiarity with this issue and when I heard your testimony that a lot of your references

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are from the realtors,...

RANDY KING: Um-hum.

SENATOR BOURNE: ...I've always wondered about that because that kind of, to me, is kind of a conflict of interest not from your behalf but on behalf of the realtors. And I can envision a situation where they have a selling agent, a selling realtor and a person comes in there and they put a, sign a purchase agreement contingent on home inspection. And that realtor, the selling agent who obviously wants to sell the home and wants a good home inspection then contracts with you and again I'm not, you know, saying anything particularly about you but...

RANDY KING: Sure.

SENATOR BOURNE: ...they contract then with that agent, then contracts with a home inspector. And I can just see some situations where maybe the home inspection wouldn't be as thorough as possible or maybe if there's things that would torpedo the sale, so to speak, that...do you see where I'm coming from as it relates to a conflict and...

RANDY KING: Sure.

SENATOR BOURNE: ...when you mention that, and I would assume that one of the things that we'd see under the regulation would be a prohibition on that type of referral. If you have a comment on that?

RANDY KING: I certainly understand that. The potential for that does exist. However, it's been my experience that most of the realtors that I've ever worked with are very professional people and on any given sale they can be the selling agent or the buying agent so they can be on either end of the transaction. And, you know, if any of them are asking for a favor one way or another one time, that will come back to haunt him the next time. The good inspector does not do that. I mean, that's an ethics issue and these kinds of ethics or situations are addressed in both the ASHI and the NAHI guidelines, virtually in any guidelines. It's also addressed in the realtors' code of conduct that they swear to adhere to. I've only run across that maybe once or twice in all the years I've done this. Those realtors that

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I'm thinking of are no longer realtors.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Appreciate you taking the time and giving your testimony.

RANDY KING: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Have you signed in, sir?

GREG WAYMAN: Yes. I have copies of a speech here so if you guys want it, I'll hand them out at the end.

SENATOR BOURNE: The page will pick...just set it on the edge of the desk and the page will distribute it. Thank you.

GREG WAYMAN: (Exhibit 4) Mr. Chairman, members of the committee, I would like to thank you for allowing me the opportunity to speak before you on the issue of home inspection on LB 660. My name is Greg Wayman, W-a-y-m-a-n. I am the president of Foundation-2-Rooftop, a professional home inspection company located in Omaha. I am also the president of the Nebraska chapter of the National Association of Home Inspectors hereafter referred to as NAHI. I'm also a certified real estate inspector which is the highest level one can attain in NAHI. I am here before you on behalf of NAHI and our local members. NAHI is a nationally recognized home inspection association with approximately 2,500 members in all 50 states and has been in existence since 1987. We have a nationally recognized and certified examination, standards of practice, and code of ethics. Additionally, NAHI provides its members training and continuing education to effectively innovate as this industry grows. It is NAHI's position that we are for home inspector licensing, but not for LB 660. If properly implemented, home inspector licensing would encourage training, education, and raise the level of quality inspections in Nebraska. Through a fair implementation of Standards of Practice and Code of Ethics, the select few large home inspection companies in the state would not be allowed to continue to enter into exclusive contracts with the largest real estate companies. These exclusive service contracts are forcing the smaller home inspection companies

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to try to survive off the smaller market and that it's also forcing some companies out of business. These restraint of trade practices are one serious issue that needs to be addressed in the home inspector licensing law, yet is nowhere to be found in LB 660. A fair home inspector licensing law is what NAHI is hopeful of. However, the present form of LB 660 would be detrimental to our industry. I come before you today to express my concerns with regard to LB 660. My concern stems from the nature of the legislation as well as specific provisions. Do you guys have a copy of the bill? In reference to that, I'm looking at Section 4, part 2 and 5 and Section 5, part d. In its current form, LB 660 places all of the legislature authority on the elected home inspector board. There is no scope of authority to guide the board on its decisions. If the majority of the board are members of one group, say, for instance, the previous speaker, ASHI, not the one that was just before me but before that, then they have the power to implement their affiliations' nationally recognized exam, standards of practice, and code of ethics and exclude any others. That creates a monopolistic authority and restraint of trade to all the other inspectors who choose not to be affiliated with that specific organization. Given the specialized nature of the home inspection industry and the fact that two nationally recognized associations exist, it is necessary for this body to provide specific guidance that will prevent against the monopolization of the mandate created by this legislation. Given the fact that NAHI has not been included in the creation of this important legislation, the monopolization has already begun. It is my fear that if this legislation goes forward, a dangerous precedence will be created. The scope of authority given to the elected board needs to be defined before proceeding. Okay. Got a couple other points but it's in there.

SENATOR BOURNE: Yeah, we have your testimony and we'll...thank you. Are there questions? So, again, your concern is is that the ASHI folks are here in support; the NAHI folks are in opposition. But your concern is that somehow the ASHI standards will be adopted and not the NAHI.

GREG WAYMAN: Right. It leaves too much power to the elected home inspector board. If the board is slanted towards one group instead of the other, then the other group gets left behind.

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SENATOR BOURNE: Are the standards that different, that much different between the two organizations?

GREG WAYMAN: No, no, they're not. They're almost identical. There are some differences.

SENATOR BOURNE: If they're almost identical then I'm confused as to why your concern.

GREG WAYMAN: Well, the concern is that I would be forced to take the national ASHI exam...

SENATOR BOURNE: Oh, I see.

GREG WAYMAN: ...instead of the national NAHI exam. And there's also in the code of ethics number 7 for NAHI, it's in there in the wording that we're not supposed to be entering into exclusive contracts. So our home inspectors do not do that. The ASHI code of ethics also addresses it but there are ASHI inspectors in Omaha that are entering into those contracts.

SENATOR BOURNE: You know, the instances where I think that there's value in passing a bill like this are when exclusive contracts like you mentioned and when a home inspector contracts with the realtor itself and Mr. King gave great testimony and I appreciate that. But I think, isn't there implicit...say you have a realtor you deal with all the time and he or she gives you, you know, what 200 inspections a year. And they call you and they say, I've got one for you out on X street. And you know that this person gives you 200 of these or 500 and I don't even know how many you can do a year.

GREG WAYMAN: That's a lot (laugh).

SENATOR BOURNE: And they say to you, (laugh) they say to you hey, this one, you know, it's contingent on an accurate home inspection. You know, I hope it works out all right or something. Isn't there some implicit veiled threat in that...?

GREG WAYMAN: There is.

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SENATOR BOURNE: ...and that is where I think the consumer needs to be...

GREG WAYMAN: Because that's our lifeblood.

SENATOR BOURNE: Right.

GREG WAYMAN: And that's where, you know, you'll hear a lot of home inspectors admit that they don't try to associate themselves with realtors but they have to market them to get the business. And when you have a realtor come up to you and say, hey, this is my listing. I need it to go through, you can't ruin your objectivity and let the home inspection slide and go in there with your eyes closed. Unfortunately, some of those inspectors out there are doing that.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: Can you tell us a little bit about your background prior to starting this company of yours?

GREG WAYMAN: Sure. I was a fraud investigator for Hartford Insurance. Did work comp fraud.

SENATOR FOLEY: Okay, do you have a background in plumbing,...

GREG WAYMAN: In construction?

SENATOR FOLEY: ...plumbing, construction,...

GREG WAYMAN: No, I do not. I've been doing this for over three years. Full-time, supporting my family. And I'll just add one more thing. I'll hold myself up against any home inspector in Nebraska.

SENATOR FOLEY: But wouldn't it be helpful if you did have some background? Construction and...

GREG WAYMAN: Yes and no. Yes and no. Some of the builders out there that have converted over to being home inspectors, they're under the impression that they don't need to have any more training and some of them don't ever get any more training. And they're going out there and doing inspections based on their previous career and the difference between a

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home inspector and a builder is a builder knows how to build something and a home inspector knows how to go into a house after it's 20 years old and look for defects. That's the biggest difference and I'm a big proponent of education. We've got a seminar coming up this Saturday and we've got over 23 inspectors coming in to attend it...

SENATOR FOLEY: Did you take a training course of some kind prior to...?

GREG WAYMAN: Yes.

SENATOR FOLEY: How...

GREG WAYMAN: And that's part of the NAHI standards as well as ASHI has the standards too.

SENATOR FOLEY: How extensive was that?

GREG WAYMAN: My specific course was a two-month correspondence course and then also one week hands-on training. We started at 6 o'clock in the morning and didn't get done until 6 o'clock at night. To give you an example, on the one day that we spent on roofs we looked at about 200 roofs in one day. It was pretty intense but when we got done by no means were we as experienced as I am right now when I first started. And there's a learning curve in this field and that's why it's important to keep going to chapter meetings and seminars and conferences and work with the trade people to make sure you know your stuff.

SENATOR FOLEY: Did you work under a mentor of some kind, somebody who's been in the field for awhile or?

GREG WAYMAN: No. The benefit of being a member of a chapter is you can bounce ideas off of other home inspectors so if there's a question you don't know you can call them up and ask them.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Further questions? Senator Friend. Senator Friend and Senator Flood sit next to each other and I always...anyway, I'm getting old.

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SENATOR FRIEND: It's a tad and we're such...never mind (laughter). Mr. Wayman, I guess I'm not totally convinced. I mean, we've got brokers out there that have to get licensed. We've got agents out there that have to take tests and become licensed by the state of Nebraska. Appraisers from what I understand, it's a fairly rigorous licensing process. The only ones that aren't licensed in this multimillion dollar business are you guys. I mean I...

GREG WAYMAN: True.

SENATOR FRIEND: ...and I'm not holding you out and I believe that you do a good job. I mean, you're confident about your ability and I appreciate that. It's just that put yourself in our place here where we're looking at...I'll tell you this. You're confident in your abilities and I appreciate that and you know what you're doing but I'll tell you this. If I was, with my type of personality and what I know, if I was a pretty good handyman, I can go out and find business.

GREG WAYMAN: Oh, yeah...

SENATOR FRIEND: That's a little disturbing to me because I don't...

GREG WAYMAN: ...anybody in this room can go to Office Depot and do that.

SENATOR FRIEND: ...you don't want me doing your business (laughter).

GREG WAYMAN: That's true.

SENATOR FRIEND: That's why it's a little disturbing. I mean I know a lot of people and people tend to hang around, if they're hungry for money, they hang around where the money is. And...

GREG WAYMAN: Home inspectors don't make a lot of money (laugh).

SENATOR FRIEND: Well,...

GREG WAYMAN: The realtors do, we don't. We're not getting

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rich.

SENATOR FRIEND: I understand. Thanks. I didn't...I appreciate your comments and I appreciate your testimony.

SENATOR BOURNE: Further questions for Mr. Wayman? Seeing none, thank you. Other testifiers in opposition? Are there any neutral testifiers? I see a taker. Are there any further neutral testifiers after this gentleman?

TODD SHEARER: Good afternoon. My name is Todd Shearer. It's S-h-e-a-r-e-r, and I've decided to speak in the neutral zone here because I don't know, a lot of things were said both ways. I think what you're looking for is, in this bill to get continuing education among people that don't seek it. My feeling is if you're not seeking continuing education and you can't afford it, you're not charging enough for your home inspection. If you're not making money in the business, why are you in the business? That's all I got to say, you know. I think ASHI standards are good. NAHI I haven't gone over them, don't know that well. ASHI does have a national examination that has been adopted and NAHI hasn't so going probably for the national exam would be the way to go on that end. I think if we just look at it hard, licensing is something that is needed to help regulate the home inspectors. I understand that it is going to be more expensive for people in smaller communities who are trying to do it part-time. But we're on the east side of the state which is a large population and it's, you know, it's needed badly here. So, hopefully, everybody will just take a look at that and see what is needed.

SENATOR BOURNE: Thank you. Are there questions for Mr. Shearer? What do you see as the biggest consumer threats from the home inspection industry? The biggest danger to the consumer? And, obviously, the bill is trying to protect consumers. What do you see the dangers to consumers?

TODD SHEARER: Would probably be unqualified home inspector in the property. You know, right now anybody who wants to throw a ladder in their truck and call themselves a home inspector, they can. And if they have seeked out NAHI or ASHI to be a representative for them that's great. I'm glad to see that they have done that. If somebody's in the

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Lincoln market and they haven't done that, I would have to ask why. You know, why don't you want that credibility to back you up, you know? Why would you not want to say that I'm a licensed Nebraska state home inspector, you know? And just simply because I can't afford it. I don't think that would be a good enough reason.

SENATOR BOURNE: What about the...we had some discussion about the conflict of interests. Is that an issue at all?

TODD SHEARER: Well, when you first start out, okay, you're saying, hang your shingle. You need to have the realtors' support because that's how you get business. I've been in business since '97 so I have referral clients coming back. So my best customer is my past client who is saying, oh, you have to use my home inspector, see my home inspector. Realtors are a big part in the beginning. You know, it's a risk right now for a realtor to be giving out your name because if something happens, you know, with the house, something is wrong, it ends up being a problem for everybody.

SENATOR BOURNE: Have you ever been encouraged by a realtor to do...make it a clean inspection or a good one, I guess?

TODD SHEARER: Absolutely, yes.

SENATOR BOURNE: Really.

TODD SHEARER: It happens quite often. I'm an independent home inspector. I don't, you know, I don't pay out for business. I don't do that. There are home inspection companies that do but that doesn't mean that they wouldn't, because of that that they wouldn't be able to get licensed. They could still end up getting licensed and, you know, it's hard to monitor that, those type of practices.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: In a typical home purchase contract,...

TODD SHEARER: Um-hum.

SENATOR FOLEY: Which party generally has the right to select the inspector?

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TODD SHEARER: It's always the purchaser. I always let the person who is paying me, that is who the client is and that is who I ask to sign that contract. I have had where real estate agents do pay for the home inspection and then they're my client and I give the information to them. And then if they want to pass it on, that's up to them. But typically, it's always the buyer of the property.

SENATOR FOLEY: Thank you.

TODD SHEARER: You bet.

SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate your testimony.

TODD SHEARER: All right, thanks.

SENATOR BOURNE: Further testifiers in a neutral capacity? Sir, are you going to testify in a neutral?

_____: I would like to testify in the opposition.

SENATOR BOURNE: I'm sorry?

_____: In the opposition because of remarks that were made.

SENATOR BOURNE: Well, if you want to testify neutral you can. We've passed the opposition testimony, I'm sorry. Okay. You could always enter your name in as an opponent but I just can't allow you to testify given we've passed that. Further testifiers in a neutral capacity? Senator Price to close.

SENATOR PRICE: Senator Bourne and members of the committee, we've had a healthy discussion of LB 660 and so I would answer any questions that I possibly could although the experts are generally the ones who testified.

SENATOR BOURNE: Questions? Senator Foley.

SENATOR FOLEY: Maybe you covered this in your opening, Senator, and maybe I just missed it. Did you tell us how

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many states have a licensure act for home inspectors?

SENATOR PRICE: Sir, I did not and I do not know. But I could get that information to you this afternoon to your offices.

SENATOR FOLEY: That would be great. Thank you.

SENATOR PRICE: Yes, I'd be glad to do this.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. That will conclude the hearing on LB 660. Senator Connealy to open on LB 674. As Senator Connealy makes his way forward, can I have a showing of hands of those here to testify in support of LB 674? Those in support? There are none. Those in opposition? I see three. Those neutral? I see none. Senator Connealy.

LB 674

SENATOR CONNEALY: Thank you, Senator Bourne and members of the committee. I am Matt Connealy. I have the opportunity of serving the people of the 16th Legislative District. I'm here to open on LB 674 that would amend state Statute 74-308 which states the procedure that is used when a railroad requires property from another through eminent domain. Now my intention is to better define the circumstances. When eminent domain can be used and to state the factors that should be used to determine the value of property taken by eminent domain. This bill proposes that certain conditions are met before a railroad may exercise that power of eminent domain to acquire property. And the conditions are that the proposed use of the plan is planned or located in a way that's most compatible with the greatest public good and the least private injury, that the property is necessary for the proposed use and that the Legislature certifies that these conditions have been met. Once these conditions are met the district court is to issue a final order of condemnation before the railroad gets the property. This follows the general procedure that we have now. The bill further lays out what may be looked at through it. Attempting to identify the amount of the just compensation payable for the

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property. The bill provides that the measure of compensation for taking of a property is its fair market value determined as of the date of evaluation. If a partial taking is in place it is the greater of the value of the property rights taken or the amount of which fair market value of the property immediately before the taking exceeds the fair market value of the remainder afterward. If you damage the property, which way is it best for the property owner currently? The bill also talks about easements. It states that any easements of a railroad terminate when the property is abandoned or not used five consecutive years or if the property is transferred to a use that's not originally identified when they took the eminent domain of that right from the landowner in the first place. If a railroad wants to use eminent domain to require surface easements along a proposed new rail line it must file a financial statement including a list of assets to show sufficient funding of the proposed rail line, file an environmental impact statement and have a certified real estate appraiser appraise the value of the easements. This bill requires that a railroad have to pay all reasonable attorneys' fees and court costs for this condemnation action. And last, the bill defines necessary as a compelling need requiring the condemner to demonstrate that there are no reasonable alternatives. The committee heard a bill similar to this in 2003, LB 675 which was introduced by Senator Erdman at that time. I believe that bill was introduced in response to an eminent domain dispute in Morrill County that eventually ended up in the Supreme Court. The court in that case ruled against the railroad and required that the railroad strictly follow rules of eminent domain. The committee held onto that bill. I introduced this concept again because the government and private industries' use of eminent domain is very timely, as we see in cases here in Lincoln or near my area in Washington County where we're talking about eminent domain a lot right now. This bill does need to be cleaned up. I think that it needs a severability clause if the committee is interested in this concept, and I'd be willing to work with you all. Along these lines, the 8th Circuit Court appeals ruled in March, 2004, in a case that dealt with South Dakota, the ability to place restrictions on railroads and their use of eminent domain. The 8th circuit case states that it's not a conflict with federal law and it's within our state's sovereign powers. What railroads might

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tell you is that that's not true and is that federal laws place restrictions on the ability of states to act in this area. They do some restrictions but some of this we can deal with. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Connealy? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Senator Connealy, would you repeat that what you said about South Dakota, please?

SENATOR CONNEALY: They ruled that there are certain areas of eminent domain and these areas that we deal with in this bill that are allowed under our sovereign powers. The federal government preempts most railroad relations with the public so that we have a very limited amount what we can do. But I believe that the sections of this bill are allowed because of the 8th circuit decision and I can get you that.

SENATOR Dw. PEDERSEN: You got any idea when that happened in South Dakota?

SENATOR CONNEALY: It was in 2004.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions? Thank you.

SENATOR CONNEALY: Thank you, Senator Bourne. I'm chairing in Revenue so I need to get back and I'll waive closing.

SENATOR BOURNE: Okay. Thank you.

SENATOR CONNEALY: Thank you.

SENATOR BOURNE: First testifier in support. First testifier in opposition. Thank you for opponents moving forward and signing in, appreciate it. Welcome.

BILL PETERS: (Exhibit 5) Thank you, Chairman Bourne, members of the Judiciary Committee. My name is Bill Peters, P-e-t-e-r-s, registered lobbyist for BNSF Railway. Following me will be one of our outside counsel so if you want to discuss specific cases, you can try me but you're

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probably going to get a better answer from a guy that's read the case recently. I'm having distributed to you a statement from our director of acquisitions. I'd just like to make a couple of points. Why do railroads condemn property? When all else fails and the reason that they are seeking this additional land is business purpose which is really quite simply your existing customers want to move more freight or new customers want to move freight. That's the business of the railroads and that's why they would be seeking to expand track and/or yards. This bill targets railroads only of those who have the right of eminent domain. It puts additional procedures on the traditional approaches and the additional procedures for the Legislature to make the determination. It sets up two requirements which the attachment deals with in more specifics but once those two requirements have...the Legislature has to make a judgment that those are met. I assume that it's a legislative process whether it's a bill or it's a resolution, I'm not sure but that's what the bill recalls. Freight is going to move in our economy. And basically in this part of the country it's going to move by one of two ways, rail or highway. Both are important and needed not only for the Nebraska economy but for the nation's economy. We maintain it would be poor public policy to restrict the options to one of those options. As a practical matter this legislation would eliminate the railroad's ability to expand. We'd urge your indefinite postponement of this legislation.

SENATOR BOURNE: Thank you. Questions for Mr. Peters?
Senator Aguilar.

SENATOR AGUILAR: Yes, Mr. Peters. In, well, just outside of Grand Island we have a scenario where we have a large industrial park. And one of the selling points of this area and some of that property out there is that we have the ability to have two different railway companies out there. That's a heck of an advantage because it forces the railroads to bid against each other and keep the prices at a decent rate where these businesses can be successful. Now if we took this ability away from you it might prevent one of those railway companies from going in there, would it not?

BILL PETERS: It would depend on the particular facts. It

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possibly could if there's more capacity needed to get in there to compete. We would have no ability, practical ability, to get there by condemnation. If we'd have to expand, for example, to two tracks and the adjoining...in that location the adjoining farmer decided he'd rather plant corn and was not a willing seller, we'd be stopped.

SENATOR AGUILAR: Exactly. Thank you.

SENATOR BOURNE: Further questions? I have a quick one, Mr. Peters. I've been in the Legislature for six years and every year there's been a bill introduced that would restrict the railroad's condemnation powers. Why do you think that is?

BILL PETERS: The one that I'm most familiar with is the one that came out of Morrill County and that was genesis for about two or three of those bills. There were certain landowners that didn't want the railroad going across their land. And their solution was to seek legislation though I might add the reference was made to the court case. Those landowners who oppose the Burlington Northern's attempts to install a new rail line, the present system took care of them even though this Legislature had inadvertently repealed some sections upon the recommendation of the Public Service Commission and not caught by myself in prior years. The law was not clear, particularly on the right of entry and what you could do upon the right of entry. They use the judicial process in the present law and the Supreme Court said those folks were right. We would have to condemn for the right of entry.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in opposition.

TOM SATTLER: (Exhibit 6) Chairman Bourne and members of the committee, my name is Tom Sattler, S-a-t-t-l-e-r. I have a summary of some prepared remarks. It's my privilege to be here today on behalf of the BNSF Railway Company. I represent the railroad in litigated matters in Nebraska and South Dakota. I know the majority of the Legislature is familiar with issues related to preemption so I'm not going to bore you with a pseudo law school discussion of preemption issues but I would like to point out a few things related to this. And in light of Senator Connealy's

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remarks, I'd also like to comment on the state of the law in the federal district of the 8th circuit and then also talk briefly about a Supreme Court opinion out of the state of Nebraska that's on point. Our position is that LB 674 and its core is regulatory in nature and that the state of Nebraska cannot regulate indirectly through the use of its eminent domain power what it cannot regulate directly. LB 674 encroaches upon the rights of railroads to control the use of their rights-of-way, impairs their ability to operate safely and efficiently and impedes their effectiveness in negotiating settlements with landowners. Now the comments I'd like to make on the current state of the law, I cited in the material that you have the federal district court decision, that is the trial court decision related to the South Dakota eminent domain legislation that was, in part, stricken by the federal district judge on the basis of preemption under the Interstate Commerce Commission Termination Act as well as the commerce clause. So the suggestion that that legislation survived constitutional analysis is not accurate. Actually, the only thing that the 8th circuit took up was a 10th amendment issue and 11th amendment issue and then it took up the issue of severability. And what the 8th circuit ultimately held, and by the way, the parts of the legislation that were stricken, that wasn't even appealed by the state of South Dakota. And those had to do with ICCTA preemption commerce clause preemption issues. The only issue that came up for appeal was an issue related to severability and the 8th circuit said that those unconstitutional provisions of the act were severable. I want to point out to the members of the committee this opinion out of the Nebraska Supreme Court, the BN Railroad Company v. Page Grain. It was an appeal from the Public Service Commission by a number of shippers in northeast Nebraska who had protested an application of the BN that was granted on a trial basis by the Public Service Commission. During the pendency of the appeal, the ICCTA was enacted and the court ultimately held that it had no subject matter jurisdiction to even consider the appeal by the shippers from northeast Nebraska. Judge Fahrnbruch wrote the opinion and stated that the state courts no longer have jurisdiction and consider the practices, routes, services and facilities of interstate rail carriers because the ICC Termination Act grants the Federal Service Transportation Board an exclusive jurisdiction over transportation by rail carriers as part of the interstate

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rail transportation network. I'd urge you to take a look at his Nebraska opinion out of our Supreme Court. It's one of the few state court opinions that holds specifically that the ICCTA preempts this type of regulatory activity. I'd be happy to take any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Sattler? Mr. Sattler, how often does a railroad condemn or you exercise this power of eminent domain? Is it constant?

TOM SATTTLER: No, it's not. It's actually relatively rare. The importance of the power to condemn is the leverage that it allows the railroad to have in entering into negotiations without that leverage. Sitting in the background then ultimately we would be at the mercy without much in the way of bargaining power of the landowners to which we'd like to do business.

SENATOR BOURNE: What percent of the cases where you're trying to acquire ground are settled versus go through the....?

TOM SATTTLER: The vast majority.

SENATOR BOURNE: Okay. Further questions? Seeing none, thank you. Next testifier in opposition.

CHRIS GOBLE: (Exhibit 7) Good afternoon, Mr. Chairman, committee members. I'm Chris Goble, director of real estate for Union Pacific Railroad Company. C-h-r-i-s G-o-b-l-e. I'm here today to register Union Pacific's opposition to LB 674. The handouts that are being given out right now will pretty much mirror the comments I'm going to make here today. First, LB 674 will block projects to improve rail transportation in Nebraska. The bill ignores the economic benefits to Nebraskans of enhanced rail capacity in Nebraska including better rail service for Nebraska shippers, more highly-paid jobs and higher tax revenues associated with building, maintaining, and operating new rail facilities. There is also a likelihood that industries that rely on rail service may choose not to locate in Nebraska if they cannot receive rail service. The existing laws also currently protect landowners. All condemnors are already required to negotiate in good faith with the landowner. That's

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specifically called for in the statutes. All condemnors are already required to establish that the property taken is for a public purpose, that the quantity of property taken is needed and that the location was selected for valid reasons. The compensation for the land is now determined by three residents which are typically appraisers in the county in which the land is located and those individuals are selected by the county court. If a landowner successfully challenges the condemnor's compliance with Nebraska eminent domain law or successfully appeals the compensation awarded by the appraisers then the condemnor is required to pay that landowner's attorney fees and court costs. The compensation provided to the landowners under the statutes already includes severance damages including the economic effect on the property as a going concern, title to the land now remains with the landowner until the land is actually used by the condemnor for the purpose for which it was condemned. Railroads that condemn property must comply with the same existing Nebraska laws that other entities with the power of eminent domain must comply with and those entities are power companies, the state roads department. And existing federal, state, and local laws already address the various land and environmental issues that the proposed bill takes into account. And then finally, LB 674 mandates procedures that don't currently exist. For example, there's no existing procedure for district courts to issue final orders of condemnation or for the Federal Surface Transportation Board in all cases to approve environmental impact statements or to issue licenses for new rail lines. And that's the end of my comments. I'd be happy to take any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Goble? Seeing none, thank you.

CHRIS GOBLE: Thank you.

SENATOR BOURNE: Appreciate your testimony. Other testifiers in opposition. Are there any neutral testifiers? Senator Connealy has waived closing. That will conclude the hearing on LB 674. Senator Landis to open on LB 50. Welcome. Whenever you're ready.

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LAUREL MARSH: Hello, my name is Laurel Marsh spelled M-a-r-s-h and I'm here today on behalf of Senator David Landis, principal introducer of LB 50. LB 50 would add sexual orientation to the list of protected categories in the Nebraska Fair Housing Act. Currently, discrimination on the basis of race, creed, religion, color, national origin, sex, handicap, familial status, or ancestry is prohibited. And LB 50 would protect Nebraskans from discrimination on the basis of sexual orientation in the rental or sale of an apartment or house. I have a statement that Dave has asked me to read and as you listen, please hear this in Dave's voice (laughter). A little hard (laugh). I do not understand how making it hard for someone to buy a home or lease an apartment is anything other than a pocketbook issue. Geographic mobility is an American tradition. The ability to pick up and move to better oneself is one of our most prized notions. Many of our ancestors were tied to the land. English serfs, German peasants, and southern slaves had no choice in where they were going to live without taking great personal risks. We are still moving to better ourselves. We move so we can attend a specific school, so we can provide support for or receive support from relatives, or to take advantage of a new job. Sometimes we move just because we want to, to what we believe is a nicer house or a better neighborhood. Or we move to smaller homes when we age and no longer see yard work as a joy. Now the limitation for most people in deciding where to move or where to live is a monetary one. Some people, however, face additional hurdles in the selection of housing because of sexual orientation. When we deny a person the opportunity to live where they want to live we are denying them control over their own lives and are creating economic disadvantages. As a whole, society is skilled in sending, "We don't want you here" messages. Discrimination is some....

SENATOR BOURNE: Hold on one second, Ms. Marsh, we'll wait a second.

(Cell phone ringing)

WALT RADCLIFFE: (inaudible) sorry. I'll go
(inaudible) (laughter).

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SENATOR BOURNE: I apologize for the interruption. Please continue.

LAUREL MARSH: Discrimination is sometimes easier to recognize at a distance. We deplored the inability of Catholics to run for office in northern Ireland. We cried foul when women were barred from high school or collegiate sports until Title IX forced the issue. And we all know someone who has been passed over for a job because of age but who got to train the new supervisor. Allowing prospective buyers or renters to be denied access to a home or an apartment that is freely offered to other buyers or renters on the open market is discrimination. "We don't want you here." This type of invisible barrier affects some citizens directly and the state as a whole indirectly. When businesses are looking to either locate to or expand within Nebraska, housing availability is one of the factors considered. This is an economic development issue and Nebraska is on the losing end. In 2003 I introduced a study resolution on this subject. We reviewed the statutory language of laws in 11 states that prohibit discrimination based on sexual orientation in housing, employment, or both. We wanted to resolve any problems due to drafting that might exist in our bills and were pleasantly surprised at how well our proposed Nebraska statutory language stood up. However, this conclusion only reinforces the fact that our laws now allow discrimination in housing against some of our fellow Nebraskans. Those who come after will provide information that shows that this problem is real and does exist in Nebraska. They will also give data that shows that the majority of Nebraskans believe the discrimination that prevents some Nebraskans from accessing housing should not exist. I ask you to report LB 50 to the floor so it can be considered by the body as a whole and to end this form of discrimination.

SENATOR BOURNE: Thank you. Are there questions for Ms. Marsh? Seeing none, thank you. And I liked the testimony a lot better out of your mouth (laughter). Can I have a showing of hands of those here to testify in support? I see seven. Those in opposition? I see seven as well. Neutral testifiers? I see none. Would the first supporter, first proponent come forward? Welcome.

JILL FENNER: (Exhibit 9) Thank you. Good afternoon,

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Senator Bourne and committee. My name is Jill Fenner, J-i-l-l F-e-n-n-e-r. I'm the director of the Fair Housing Center of Nebraska and we provide fair housing enforcement services throughout the state. We are a program of Family Housing Advisory Services which is based in Omaha. Family Housing is a not-for-profit company which oversees what we do. Our organization was chartered in 1968. The Fair Housing Center has operated since 1994 so we've been around for just about 11 years. Family Housing is the only qualified fair housing organization. That's a formal term of HUD that is recognized by the United States Department of Housing and Urban Development in Nebraska or in Iowa. Qualified fair housing organizations such as ours are nonprofit companies that assist with the enforcement of fair housing laws through our counseling, education, outreach, complaint intake, testing, and the investigation of fair housing complaints. And I'm here today in response to a request from Senator Landis to testify regarding our experience regarding the level of housing discrimination based on sexual orientation that we have seen. The experience of the center does indicate that there is a problem of discrimination in Nebraska that relates to sexual orientation. I have been working at the Fair Housing Center for six years now and during that time we've received contacts on a regular basis from persons asking us to please look into specific problems of discrimination in housing that relate to sexual orientation. We do not keep formal statistics of these contacts, however, because orientation has not ever been a protected class in the state of Nebraska. So, therefore, it's outside of our purview. We regularly receive one to two calls every month on this basis, approximately 12 to 20 a year at this time. These contacts come primarily by telephone and they do come from all areas of the state of Nebraska. We have an 800 number that we freely publicize and we get calls from throughout the state. We're just as likely to receive a call from central or western Nebraska as we are from the major metropolitan areas such as Lincoln or Omaha. As an example, our most recent call that came in just quite recently came from a small community in the Panhandle area of our state. The center receives these calls consistently over the last six years that I can document even though we indicate in our education and outreach through our general workshops and other activities that orientation is not a protected class in Nebraska. Because orientation is not protected, we can

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only tell the people that call us that while they might have experienced housing discrimination that it is not unlawful as a form of discrimination in this state. Now there are forms of discrimination that are considered lawful and can be used to predict if a home seeker is a good risk on terms of a landlord, in terms of a lender, those kinds of situations. And some of these would include what's that person's work history look like? What's their credit rating look like? Do they have bankruptcies on their records? Do they have a criminal history that is considered? Those things can be used as predictors of whether or not this is going to be a successful person in that apartment or home. Sexual orientation, however, is not a predictor of success or failure as a home seeker. So to summarize, our experience does show that there is, indeed, discrimination in housing based on sexual orientation in the state of Nebraska and that it is not limited to the metropolitan areas but can be found consistently throughout the small communities in our state as well.

SENATOR BOURNE: Thank you. Are there questions for Ms. Fenner? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Ms. Fenner, you said there's a couple of calls a month regularly...

JILL FENNER: Yes, sir.

SENATOR Dw. PEDERSEN: ...on this issue. What other issues do you get calls on?

JILL FENNER: We get calls on...in terms of fair housing complaints we get calls related to, can people say no children? That's a significant amount of calls. We have a significant caseload that relates to disability, to race, to national origin such as Hispanic. Those are the primary areas. Occasionally, religion. We get calls related to religion as well.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Ms. Fenner, do you see the incidents of...are the calls increasing, decreasing, remaining the same for this?

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JILL FENNER: They seem to be pretty consistent and, again, we actually in our education do tell people, this is an example of discrimination that while it may occur, is not unlawful. We've included that because we always were asked and so we started just including it as a matter of course in our education. We haven't seen any drop. We haven't seen any particular rise. But it is consistent and has been ever since I started at the center.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

JILL FENNER: Thank you.

SENATOR BOURNE: Next testifier in support.

HERBERT FRIEDMAN: Good afternoon, Senator Bourne. My name is Herbert Friedman, H-e-r-b-e-r-t F-r-i-e-d-m-a-n. I appear here on behalf of the Antidefamation League. The league is probably one of the oldest civil rights groups in the country, going back to 1913. We are here in favor of this bill. It is the policy of the ADL to support the expansion of...how should I put this...the expansion against policy of discrimination in this state. And we think that the way the current state of the law is that there is a gap in this problem. For all practical purposes and to cut to the chase, if we don't pass this particular bill there is still perhaps a sign at the borders of this state that basically says, gays are not welcome. And we think that that is contrary to the message of the state of Nebraska, the goals of the state of Nebraska of having open employment and a good life for all of its citizens. And that's basically what our position is. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Mr. Friedman? Seeing none, thank you.

HERBERT FRIEDMAN: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support?

TIM BUTZ: (Exhibit 10) Good afternoon, Senator Bourne,

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members of the committee. My name is Tim Butz. Tim, common spelling, Butz, B-u-t-z, executive director, ACLU Nebraska. I've got a written statement for the record that's being passed out. Wanted to call your attention to the Nebraska Constitution's Bill of Rights. And Article I, Section 25, the people of the state of Nebraska in 1920 placed this language into their Constitution. "There shall be no discrimination between the citizens of the United States in respect to the acquisition, ownership, possession, enjoyment or descent of property..." Clearly, there's a constitutional mandate to pass LB 50. It simply is going to provide a mechanism by which people can complain of a deprivation of rights that's already secured by the state Constitution. The phrase, no discrimination in the language of Section 25 means exactly what it says. I mean, Nebraska Supreme Court dicta on this is clear. They apply a plain language test to anything that's in the Constitution or in statute. It doesn't say, no discrimination except for those that are gay and lesbian and bisexual. There are going to be people coming in back of me who oppose this bill and are going to make statements about highly held personal beliefs and so on. I want to reassure those people that by adding sexual orientation into the language of the Fair Housing Act they're not going to be forced to take anybody into their home that they don't want to. The Fair Housing Act applies only to cases where the renter, the landlord rather, has four or more units for rent. It exempts homeowners who rent homes in their room (sic) if they don't rent more than four. There's no reason for anyone to fear that their personal liberty is at stake here, their right to make choices about their own home. I'm somewhat confounded and I think Mr. Friedman did a better job than I can on this but I'm just amazed at why we still have to be talking about these issues of equality in the year 2005. I would have hoped we would have gone beyond that. I hope that I live to see the day when this state admits that the Nebraska state motto, Equality Before the Law, doesn't have a little footnote that says, except unless you're gay. We have to amend this law. We have to amend other laws to make sure that this highly touted idea of Nebraska is the good life comes a reality and not just a hollow promise on the letterhead of the state. If you have questions, you know, there's 12 other states that have this kind of a law. You're not being asked to do anything that's new and radical. Montana state Legislature, about three weeks ago their senate passed a bill and sent to

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the house a similar bill, actually a more comprehensive bill because it includes employment. You're not breaking new ground here. You're simply being asked to put a mechanism in place to defend rights that are already secured by the Constitution. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Butz? Seeing none, thank you.

TIM BUTZ: Thank you, sir.

SENATOR BOURNE: Next testifier in support?

WALT RADCLIFFE: Senator Bourne, members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing as a registered lobbyist on behalf of the Nebraska Realtors Association in support of LB 50. I apologize for my errant cell phone. I wish that was the worse thing that's happened to me today but the realtors traditionally have supported the concept of LB 50. They believe in nondiscrimination. They're in the business of buying, selling, and renting real estate and do so on a nondiscriminatory basis and unequivocally support the bill and its intent. I'd be happy to answer any questions.

SENATOR BOURNE: Questions for Mr. Radcliffe? Seeing none, thank you.

WALT RADCLIFFE: Thank you.

SENATOR BOURNE: Next testifier in support.

MICHAEL GORDON: (Exhibit 11) My cell phone is off (laughter). Good afternoon, Senators. I am Michael Gordon, G-o-r-d-o-n. I'm the executive director of Citizens For Equal Protection. CFEP is a nonprofit organization that advocates equity for the gay, lesbian, bisexual and transgender families of Nebraska. I'm here today to ask you to advance LB 50 out of the Judiciary Committee. Last week when I testified on LB 759, the employment bill, adding sexual orientation to the protected classes of Nebraska's Fair Employment Practices laws I gave all of you packets that also deal with fair housing laws. I also gave you all some preliminary polling information from all 49 legislative districts that deal with workplace nondiscrimination. Today

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I've included a letter from the Bureau of Sociological Research that explains the process of data collections, preliminary figures from research that deals with housing nondiscrimination. As you can see, the results from the eight legislative districts from the Judiciary Committee are favorable to passing LB 50. Once again, I have found none of the 49 districts have a rating below 50 percent. The numbers from your districts are about the same as the workplace numbers. These range from a low of 64 percent in Senator Flood's district to a high in Senator Combs' district of 80.9 percent. Sorry, Senator Foley, you lost this time. The final numbers from this poll will be available in late March. I will be able to give you a final tally at that time. I think you will find that housing discrimination exists and there is a definite problem. Please consider the passage of LB 50. I would also like to address very quickly some other polling figures that we have collected. In the study we also inquired of all districts how the citizens feel about any same-sex relationship protections. Not one district has a rating of over 50 percent. This is something our opposition always talks about. We claim we are working towards same-sex marriage by including laws that protect gay, lesbian, bisexual, and transgender citizens in workplace and housing. Now I'm not the sharpest knife in the drawer but I don't spend all my time working on things like emptying the ocean with a teacup. I'm not going to spend a lot of time on bringing same-sex marriage to Nebraska until all of you have great, great, great grandchildren and, hopefully, I'm retired. So we all understand that Nebraska is a conservative state and it will be a very long time, if ever, that any recognition of same-sex relationships will be a reality in Nebraska. But we also know that Nebraskans are fair-minded people and this poll indicates that there would be no problem passing fair housing, employment laws. Thank you. Any questions?

SENATOR BOURNE: Thank you. Are there questions for Mr. Gordon? Seeing none, thank you. Next testifier in support.

RYAN FETTE: Good afternoon, Senators. My name is Ryan Fette, F-e-t-t-e. I am representing myself this afternoon and as a young, gay man living in this state the fact that I am not protected from discrimination in employment and housing makes me seriously consider remaining here. My

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family has been in Nebraska for five generations but without those types of protections. Luckily, I have not been a victim of discrimination myself. However, I have watched other young, gay, lesbian, and bisexual people be fired from jobs, be denied housing, and I have to wonder, why would I want to stay here? I listen to my straight friends who find out that such discrimination is lawful and they're outraged and I think that the best service to do for the people of Nebraska is to advance this bill out of committee so that we can contact our representatives and have this voted on and hopefully passed. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Fette? Seeing none, thank you. Next testifier in support.

STEPHEN GRIFFITH: Senator Bourne, members of the committee, my name is Stephen Griffith, S-t-e-p-h-e-n G-r-i-f-f-i-t-h. I'm a minister at St. Paul United Methodist Church in Lincoln. I'm here to testify in support of LB 50. As you might imagine, I'm going to address my remarks primarily from a moral and ethical mindset. The United Methodist Church teaches that all persons are equally valuable in the sight of God. Therefore, certain basic human rights are due to all persons. The standard list of these rights repeated frequently in our social teaching and shared by other faith groups includes food, clothing, shelter, education, healthcare, employment, and others. Therefore, as a Christian and as a minister not to mention a citizen of this state, I'm obligated to work for a society where each person has equal access to housing and other basic needs. Further, our teaching specifically commits us to support these rights for homosexual persons. We see this as a clear issue of simple justice. Therefore, I feel compelled by my own faith and by my ordination to support this bill. I recognize that as a society we've not yet come to unanimous religious or moral agreement but for me and for many Christians equal justice and respect for the rights of all citizens are themselves moral values. To deny rights to some that most of us take for granted simply because of sexual orientation violates the fundamental values of our society. I have heard the argument that because only a relatively few people in our society are gay or lesbian there's no need for such a bill. You've heard testimony to the contrary but for a moment let's suppose for the sake of argument that only one

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person a year is discriminated against because of his or her sexual orientation. It might seem inconsequential but if that one were your daughter or son or grandchild or brother or sister or your best friend, wouldn't that be one too many? This discussion is not about abstract categories. We're speaking about our own families, friends, and neighbors. A few days ago I heard Senator Landis read from the words of Dr. Albert Schweitzer. I don't have the exact text but the essence of his words, as I recall them, were that no one is free unless all are free. No one is respected unless all are respected. Of course, I can't presume to guess what Dr. Schweitzer's opinion might have been on this particular question but his eloquent, ethical principal inspires me to speak out and to keep working to extend an inherent respect and dignity to every person. I thank Senator Landis for introducing this bill and I urge you to send it to the floor and work for its passage. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Pastor Griffith? Seeing none, thank you. Next testifier in support.

VERNON WILLIAMS: (Exhibits 13, 14) Good afternoon, Senators. I'm Vernon Williams, W-i-l-l-i-a-m-s. I have a couple of handouts for you. I'm a retired psychologist and a member of Parents, Friends, Families of Lesbians and Gays-Cornhusker here in Lincoln. And I think it was largely because I, in my presentation to the chapter last month, that I was asked to come and testify this afternoon. I presented to the chapter here in Lincoln an article based on what's called conversion therapy or reparative therapy which is aimed at changing the sexual orientation of people who are gay, lesbian, bisexual, or transgender. It may seem as if that has very little to do with this bill that you're considering this afternoon but opponents of this and other bills like it before this body have testified that sexual orientation other than a straight heterosexual orientation is a sin to be excised and I simply wanted to present to you this afternoon some professional opinion to the contrary. As one of the handouts I gave you says, the American Psychiatric Association in 1973 said that homosexuality per se is not a psychiatric disorder. Until that time it had been so considered. The second handout concerns conversion or reparative therapy itself and some of the

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harms that people have documented who have been participants in that therapy. Because of the narrow focus of most reparative therapy it results many times in severe difficulties for the people that participate in it so I simply wanted to bring that to your attention as you consider voting this bill out to the floor of the Legislature.

SENATOR BOURNE: Thank you. Are there questions for Dr. Williams?

VERNON WILLIAMS: Yes.

SENATOR BOURNE: Seeing none, thank you. Next testifier in support.

JEAN DURGIN-CLINCHARD: Good afternoon, members of the committee. I'm Jean Ilene Durgin-Clinchard. Durgin, D-u-r-g-i-n-C-l-i-n-c-h-a-r-d. I'm a longtime member of the same group that Dr. Williams is a member of, Parents, Families, and Friends of Lesbians and Gays. I was the first president. In fact, I came up with the Cornhusker because I thought this was a good state and we needed to be PFLAG-Cornhusker. I'm not going to go on at length because all of my notes have been almost taken care of by the previous testimonies that you've heard. But there was one, I think Brian talked about his friends being surprised to learn that it's still possible to discriminate on the basis of housing and employment in the state of Nebraska. I have a Ph.D. in adult education and I'm called upon to do classroom presentations at both UNL, Doane College, and down at Doane in Crete on the subject of heterosexism and homophobia. When I conduct those workshops or those classes, the students are...and these are both traditional age students as well as at Doane in Lincoln, older students coming back and going to college. And they are uniformly surprised that there is the ability to be denied housing in the state of Nebraska simply because you're gay or lesbian or bisexual. I've been in PFLAG and been a representative in the gay, lesbian community as a parent since 1981 so I've been around awhile. I know that this exists but because there is no data that can be collected...I mean, it can be collected but you heard the first person testifying say that they actually use in education that, you know, this is not a protected category. Therefore, you know, don't bother us

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with it and yet they still get calls. So how many other calls would they get if you were a protected category. It is a problem. So I urge...one of the things I wrote that I could still say (laugh) is I urge that you do move this out of committee. That for me, and when you talk about fair housing, fair by definition means that it's wrong to discriminate on the basis of who a person is. Certainly their behavior when it's illegal, that's, you know, yeah, I don't want somebody breaking up my furniture or my house but fair means that it's wrong to discriminate so I urge you to pass this out of committee and to the floor. If you have any questions I'll be happy to answer them.

SENATOR BOURNE: Thank you. Are there questions for Ms. Durgin-Clinchard? Seeing none, thank you. Next testifier in support. We'll move to the opposition testimony. Would the first testifier in opposition...actually, would all the opponents come forward and sign in?

AL RISKOWSKI: I'm Al Riskowski. It's R-i-s-k-o-w-s-k-i with Nebraska Family Council. I appreciate having the opportunity as a Nebraska citizen to be heard. It's a great privilege here. Sexual orientation defined in LB 50 is a state of being heterosexual, homosexual, or bisexual, having a history of such orientation or being identified with such an orientation. First, I believe there is not sufficient warrant for this special protection. Homosexual right groups have yet to show that there is some sort of widespread discrimination, that it does exist. There are 1.6 million people in the state of Nebraska and 12 to 24 cases hardly would warrant that. We just concluded Black History month. In the sixties when the U.S. Supreme Court created the protected class status it was to help a truly deprived group. Obvious help was needed by the black community to attain housing in other than certain sections of town. I don't see that happening or the situation here. As an example, I had a son and a friend who were looking for an apartment together, looked at numerous apartments. And on no occasion were they ever questioned about their sexual orientation as to why they were looking for an apartment together. No one even knew what their situation was and no one seemed to care. In contact with the Nebraska Realtors Association they said they provide equal service reports. They do want everyone to get the same standard of service.

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Actually, I think the Realtors Association being here on behalf of the bill bodes our testimony and that they are saying there really isn't a problem out there. We want everyone to get adequate housing and we're in favor of that which we are as well. Second, this type of special protection is fundamentally inconsistent with other types of antidiscrimination legislation. Historically, special rights were provided to groups based on morally neutral grounds. And I want to take just a moment to give a better understanding of why we come here more often. I've been a pastor for a number of years and had permission to give just the barest of a counseling situation. But I had a couple come who for the third time the man had been in an adulterous affair, trying to salvage their marriage. In questioning with him, it was asked of him how many affairs have you had? Have you had three? He said, no, I've had more. We said, well, on the outside is it ten? He said, no, it's more than that. We stretched our minds and we said, you've had 50 different partners? No, it's more than that. A hundred? He said, well, I'm not sure. When I started getting by with it, I just took my liberty and knew I could get away with it and probably it's closer to 200 different partners that I have had while being married to my wife but I'm bisexual so it's okay. It's not okay to be bisexual and that's why we see this as a moral issue. These things are shocking, not only that this man had almost 200 different partners but the willingness of that many other men to be in association with him here in Nebraska to me was even shocking. So this type of legislation blurs the distinction between acceptable, moral, and ethical sexual behavior and a deprived class for true individuals. I believe this legislation is bad policy for Nebraska.

SENATOR BOURNE: Thank you. Are there questions for Pastor Riskowski? Seeing none, thank you.

AL RISKOWSKI: Thank you.

SENATOR BOURNE: Next testifier in opposition.

WENDY BARBER: My name is Wendy Barber, B-a-r-b-e-r. I am a real estate agent here in town with Home Real Estate. I've been a real estate agent for about seven-and-a-half years now and I'm really here to kind of witness my observation as a real estate agent, this area of discrimination which I

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have really not witnessed discrimination in this business. I think one of the things we attribute it to is we have excellent training that goes on. In order to get your license to sell, to work with buyers in this town you are really required to go through ethics training that is not just to get the license but an ongoing process every other year in your training. We also get a wonderful, you might say, teaching through our brokerages, through our brokers at sales meetings and it's an ongoing process of encouraging us to be sure to not discriminate on any issues. And I can only say through my own experience I haven't seen discrimination. I've worked with many buyers and sellers over the past years but I also work with fellow agents through all the different companies and this isn't something that any of us take lightly. In fact, I think when you first become a real estate agent, after you go through your initial training there's almost a healthy fear that you come out with that this is something you have to guard. This is something you have to be very careful of. And so I'm really just here to tell you as a witness I am not seeing discrimination in that area at all. And we guard every one of our clients with the same attitude of equal treatment for all people and just wanted to be able to share that.

SENATOR BOURNE: Thank you. Are there questions for Ms. Barber? Senator Aguilar.

SENATOR AGUILAR: Thank you. Earlier reports you heard someone testify that their office received as many as possibly 20 reports a year...

WENDY BARBER: Yes.

SENATOR AGUILAR: of complaints. However, you state that you are not aware of any...

WENDY BARBER: I am not...

SENATOR AGUILAR: Would you contend because of that other report that they do exist?

WENDY BARBER: Well, I'm not...

SENATOR AGUILAR: Or because you haven't heard of any of them, they don't exist?

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WENDY BARBER: I wouldn't say that, you know, I certainly don't have the facts of what she's sharing and if my understanding was correct this was from several different areas. I'm only sharing what I know as an agent, my experience here in Lincoln and it's, you know, again, if there's been any issues I'm not aware of them.

SENATOR AGUILAR: Would you contend that if the numbers are low enough, then it really doesn't matter?

WENDY BARBER: I don't know that I'd contend that it doesn't matter but it's how we deal with it, to me that would matter. If it's an individual realtor that is stepping out of line with the ethics we've been trained in we have certain procedures to deal with those issues. If this was happening on any scale that we needed legislation on, I think I would be in support of that but I guess not seeing anything or hearing anything, even if there were one or two situations I would think we need to deal with the individuals because it would show me that they're not walking in the ethics of what they've been trained in in our business and that can happen in any area. And that would just be my opinion.

SENATOR AGUILAR: And it does in other areas as well.

WENDY BARBER: Yes, yes.

SENATOR AGUILAR: I'm sure...thank you.

SENATOR BOURNE: Thank you. Further questions? Are most rental situations handled by an agent?

WENDY BARBER: They aren't by me (laugh). There are...no, they actually...most rental situations are handled by management services to rental...you know, depending on, of course, what they're looking for if it's apartment or you're looking for a house. But as agents, we can help clientele that might be temporarily looking for rentals. We certainly can get out there and try and make connections but we don't really get involved...it's not the involvement that you have in selling a home. Let's just put it that way. You're almost doing the same thing they would do when they pull up the newspaper and they go, you know, just check out places.

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You just drive them around, help them to find the place they're looking for. You don't really get involved in anything contractually.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

WENDY BARBER: Thank you.

SENATOR BOURNE: Next testifier in opposition.

RICHARD CLEMENTS: (Exhibit 15) My name is Richard Clements. I'm an attorney at Elmwood, Nebraska, spelled C-l-e-m-e-n-t-s. I'm also a licensed real estate broker, have been so for about 30 years, also a registered appraiser in Nebraska and also a banker. All of my activities in my small town seem to...would be potentially affected by this bill. I wanted to direct your attention today though to a couple of constitutional provisions and I provided those in the handout. First of all, it's Article I of the United States Constitution that says, "Congress shall make no law respecting an establishment of a religion, or prohibiting the free exercise thereof." Second, the second...that one you're familiar with. Second one you may not be. The Preamble of the Nebraska Constitution states as follows, "We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the Constitution of the state of Nebraska." Section 4 of that Bill of Rights for Nebraska says, "All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to support any place of worship, nor shall any interference with the rights of conscience be permitted... Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship..." I guess my comment today is that LB 50 would violate both of those constitutions, both the Nebraska and the federal one by attempting to prohibit the free exercise of religious expression and I believe it interferes with the rights of conscience that the Nebraska Constitution mentions as well when it would come into play for homeowners for landlords. I think this body needs to seriously consider the need for

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the Nebraska Constitution to be amended before this bill would be lawful. The Nebraska Constitution mentions the word morality being essential to good government and that word morality is referring to moral absolutes and boundaries that do not change over time. The behavior this bill seeks to protect falls outside those boundaries, in my opinion. Just for example, a loving parent tells a child not to play in the street in order to keep him from harm. Setting healthy boundaries is an act of compassion, not injustice. Like good parents, good government does not strive to protect all behavior of its citizens but should strive to protect them from behavior which has been proven to lead to increased health risks. I guess my comments are that the bill is really an attempt to silence a part of the citizens of this state and therefore is a bad idea. Are there questions?

SENATOR BOURNE: Thank you. Are there questions? Senator Aguilar.

SENATOR AGUILAR: Yeah, do you believe that each individual's morals may be a little different according to that person's personality or do you think everyone's morals should reflect what you think?

RICHARD CLEMENTS: I think morals, if you look at the traditional definition of them, are absolutes, absolute standards, standards that have been set, again, for the protection of people's health as opposed, as a punishment. So I...and that is the question of this century whether morality will be defined by each individual person or whether there are absolute truths that need to be, I guess, recognized. So, I guess, if you think that each person can state their own moral standards then how can you have a speed sign on Interstate 80? One individuals thinks that boy, I don't think speeding should be immoral or wrong. So I think you start to slide down the slope of having...very difficult to have a society that is functioning without a set of common rules or standards that are outside of the individual's preference, let's say, for morality.

SENATOR AGUILAR: So, for instance, a person...let's just say a homosexual, for instance, can have one partner, can go to church every Sunday and believe in God, lead a good life by any other standards, means. But in your eyes he would

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still be an immoral person.

RICHARD CLEMENTS: Actually, in my eyes in my study, the person...

SENATOR AGUILAR: Yes or no?

RICHARD CLEMENTS: ...beg your pardon?

SENATOR AGUILAR: Yes or no?

RICHARD CLEMENTS: Yes or no. I don't...you didn't mention what their behavior was but based on their behavior, I would say yes, that that would be an immoral act. The person themselves has, deserves great respect. The person themselves deserves compassion. Their behavior, though, does not deserve the protection that this bill attempts to provide.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Thank you. Further questions? You mentioned, Mr. Clements, that it's about respect and that...isn't that what the bill does? I mean, I don't see this as sanctioning anything. It simply says that everybody is entitled to housing.

RICHARD CLEMENTS: Yeah, it goes beyond the issue of respect. It goes then to basically eliminating the other viewpoint that the landowner should have some control over his own property. The word control I noticed was used by one proponent. I think it was Senator Landis' opening and the word control really is at issue here. Does the Legislature control what persons can do with their property and, as a result, control their ability to use their conscience or their religious beliefs or do private citizens control their property? And those two are at odds.

SENATOR BOURNE: Say the bill instead of, say, sexual orientation was already in there but religion wasn't. If the bill was adding religion to the list of areas where a landlord could not discriminate. Would you be opposed to adding that?

RICHARD CLEMENTS: Probably not.

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SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in opposition.

ROBERT KLOTZ: (Exhibit 16) Robert Klotz, K-l-o-t-z, from Lincoln, Nebraska. LB 50 desires to add sexual orientation to the segregated list of protected individuals which includes religion. This creates a paradox. Religion is discriminatory and segregates. For example, more than one religion discriminates against drunkenness, murder, homosexuality, or the stripper from the bar who would enter their place of worship with only the stripper's work costume fully on display. Now, the following are some things you might want to consider. Religion is protected by the United States Constitution and is itself violated by state law that makes sexual orientation a right equal to the constitutional rights of religion, forcing the religious to alter their personal religious practice which violates separation of church and state. Number two, a conscientious religious person who owned four or more rental complexes may rather forego any income from any group known to be a homosexual group especially if they lived in that complex and did not want their children exposed to this kind of behavior. Number three, no one has the right to be offended or not to be wanted if someone else does not care for their lifestyle. We do it all the time and with the blessings of this Unicameral. Just look at the rejected lifestyles you put into the prison system. No one has the right to be a negative influence to a community and then demand they be accepted or protected. Number four, the deplorable homosexual act of sodomy was a crime in 1950. Today the majority of Nebraskans are opposed to normalizing homosexuality. The people of Nebraska had to pass a constitutional amendment by referendum that rejected the acceptance of this lifestyle of sexual perversion when it came to marriage. And the majority of Nebraskans have not changed their minds. They don't want a law that erodes the force of the will of the people. Number five, those of you in the Unicameral who would believe deviant behavior should be mainstreamed need to be honest brokers and put your cards on the table. Let there be public dialogue and convince the public of the worth of deviant behavior. Let the matter be looked into thoroughly, honestly, and completely. Vote no.

SENATOR BOURNE: Questions for Mr. Klotz? Senator Aguilar.

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SENATOR AGUILAR: Yes, Mr. Klotz. You talked a lot about religion. Would you then agree that there are a myriad of different religions in this world?

ROBERT KLOTZ: True.

SENATOR AGUILAR: Some of which don't even believe in God?

ROBERT KLOTZ: I'd say most don't.

SENATOR AGUILAR: Well, in that case why would you think it's okay to have strict standards for religion that differ but not in a situation of sexuality?

ROBERT KLOTZ: I don't quite follow the question what you mean. Strict standards for religion.

SENATOR AGUILAR: Well, you contend it's okay to have a lot of different religions but in an area as narrow as sexuality, you think there's only one direction to go.

ROBERT KLOTZ: You've got to remember that religion is the godfather of protected groups, a constitution. Like it or not it is because the people who wrote the Constitution left it out originally but the people wanted it in there and wouldn't pass the Constitution unless religion was protected. So religion is protected whether you like it or not and that is our ancestry and our history to start with. Now religion can be...some are for homosexuals, Christian religions. You had a pastor here who spoke on that. You have those who are against it. What I'm saying is this. You cannot now turn the table against religion. If a religion says, they don't believe in homosexuality even if all the other religions did. Constitutionally, they are protected. You cannot trample their right and their protection since they are...have been grandfathered in for what, 200-some years.

SENATOR AGUILAR: You think our forefathers were right by including religion in there as one of those rights?

ROBERT KLOTZ: Absolutely.

SENATOR AGUILAR: Thank you.

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SENATOR BOURNE: Further questions for Mr. Klotz? Thank you. No, seeing none, thank you. Next testifier in opposition.

DON KOHLS: My name is Don Kohls, K-o-h-l-s. After reading this bill over several times, I have some questions that I ask this committee to consider when voting on it. Since there are three defined sexual orientations in this bill, I pose this hypothetical question regarding heterosexuality. I have two sons and a daughter whom I love more than I can describe and express here. Should any one of them come to me to rent one of my houses along with their girlfriend/boyfriend and I refused on the grounds of sexual impropriety could they now bring litigation against me? Another situation where I rented in good faith only to have a man or woman turn it into a house of prostitution. Will I be violating the law if they were asked to leave on the grounds of sexual misconduct? In addressing the homosexual and bisexual orientations I am left with great concerns as well. The reasons? According to the United States Center for Disease Control and Prevention or the CDC homosexual men, in particular, are responsible for 44 percent of all men of all new cases, AIDS cases, and in another separate report the CDC also noted that the rate of infection for homosexual men continues to climb with the number of new cases up nearly 11 percent over a four-year period ending in 2003. This can be verified at www.cdc.gov. With statistics like these, from those who make these studies valid, why should I want to lend or play a part in contributing to such destructive behavior? It has been argued that it is no one's business when it comes to what goes on in one's bedroom but I beg to differ when it's on one's own property and that sexual misconduct causes these kinds of harms and problems. We humans are saddled with over two dozen sexually transmitted diseases and, according to the CDC which tells me that we have made some very serious design violations along the way. Because these are moral issues I have grave concerns that this bill infringes on our religious liberties. It seems to me that should this bill become law the state of Nebraska would be telling its citizens what is morally acceptable irregardless of our beliefs. It is for this reason I ask that this bill not pass from this committee. Thank you.

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SENATOR BOURNE: Thank you. Are there questions for Mr. Kohls? Senator Aguilar.

SENATOR AGUILAR: Yeah. Are heterosexual people ever responsible for transmitting sexual diseases?

DON KOHLS: Absolutely, absolutely.

SENATOR AGUILAR: Okay. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in opposition?

CHESTER THOMAS: (Exhibits 17, 18) My name is Chester Thomas, T-h-o-m-a-s. Thank you for the opportunity, Senator Bourne and Senators. I am coming not from a particular position other than that I'm convinced that homosexuality is an extremely destructive lifestyle. And it's my contention that when we as a society, and particularly we as sinners, will tend to normalize homosexuality through legislation that we're doing far more damage to the homosexual, to our youth and our culture than good. I have the utmost confidence that you senators are concerned with doing the right thing for all of our citizens. I am also convinced that you are concerned with the homosexual himself. The testimony that Mr. Kohls gave, talking about 44 percent of the AIDS cases being homosexual men is, I think, rather telling. There is testimony given by Dr. Jeffrey Satinover in his book from whom I've taken much of the information that would indicate that 30 percent of all homosexual men in their twenties will either be dead or HIV-infected by the time they are 30. That was written in 1996 so with the progress that's been made by HIV and AIDS it is certainly devastating. I'm presenting credible testimony against LB 50. It tells why so many feel that homosexuality is a harmless acceptable lifestyle and then offers many reasons why it is actually dangerous and high risk to the homosexual and our culture and our youth. I take much of my information from Dr. Satinover's book, Homosexuality and the Politics of Truth. As to credentials, he's a former fellow in psychiatry and child psychiatry at Yale University and past William James lecturer in psychology and religion at Harvard. He holds degrees from MIT, Harvard University, and the University of Texas. On these various pages he has detailed the seriousness of the problems associated with

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homosexuality and he has also posited the only...and he has talked about his outrage at gay activism which actually distorts the truth and harms not only society but homosexuals themselves and especially young people. He posits...he also says that on page 66 and 70 of the handouts, that Satinover details the seriousness of the problems associated with homosexuality and then he posits that the only ethical approach to helping men and women who consider themselves homosexual and especially youngsters still wrestling with their emerging sexual feelings must at the least include a willingness to help them change not only the high-risk behaviors but the homosexual orientation itself. And I trust that hearing the facts and the truths that you will let LB 50 die here. And I pray that you will as a body and/or individually demonstrate a willingness to actually help the homosexuals change not only the high-risk behaviors but the homosexual orientation as well.

SENATOR BOURNE: Thank you. Are there questions for Mr. Thomas?

CHESTER THOMAS: Yes.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Those are very impressive facts and statistics. In your mind, do you think if we do not pass this bill, do you think those numbers of young men dying is going to decrease?

CHESTER THOMAS: Senator, I presented this stuff from very credible sources to show where we are today. Okay? Gay activism over the last 30 years has politicized homosexuality so that we have been as cities, as health departments, hindered in actually handling HIV, AIDS in the same way that communicable diseases have been handled traditionally for a century. For example, in San Francisco and other large metropolitan centers the homosexual activists have...

SENATOR AGUILAR: My question is very simple. If we do not pass this bill, how is any of that going to change?

CHESTER THOMAS: Senator, I really don't know. All I'm saying is that...

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SENATOR AGUILAR: I don't either.

CHESTER THOMAS: ...because of the politicizing of this we have a real problem. It's epidemic. The problem really is when here we are even, almost in a confrontational mode. We shouldn't be. We're all men and women of goodwill and you have been deceived...excuse me, I'm not saying that individually and certainly not pointed at you but we as a society have been deceived. We have not gotten fair coverage from the media over a 30-year period that would give us the ability to have a dialogue about really what is homosexuality and, as a result, these facts have not been brought before the public. There has not been a dialogue. To get these facts, thank goodness for the Internet. One can go and get information that is credible and will show the plight that we are in as a society. And once again, my feeling is that if you truly have compassion for the homosexual then you would do everything that you possibly could to bring them out of the homosexual lifestyle and the sexual orientation rather than trying to normalize it through telling the public and our youth that it's an okay thing. It isn't, Senator.

SENATOR BOURNE: Are there further questions for Mr. Thomas? Seeing none, thank you. Appreciate your testimony. Other testifiers in opposition? Did you sign in, sir? Thank you.

PETE SMAGACZ: Yes, I did, yes. My name is Pete Smagacz, S-m-a-g-a-c-z, and I had quite a bit of material prepared but it's already been covered a lot of it, the Constitution, the United States Constitution guarantees the free exercise of religion. I see anything that would force me if I owned an apartment complex, if it would force me to rent to a homosexual and that goes against exercising my religion, I see that as unconstitutional. I think Senator Aguilar's question of Mr. Thomas, I would answer that that any...the agenda of the homosexual activists is to legitimize and to affirm their behavior. And if you pass a law such as this one, you are incrementally...I'm not saying this is the end-all but you are incrementally affirming what they're doing. And that behavior, that behavior is sinful and that's outlined by this book here, the Bible, which calls that behavior grievous, an abomination, vile, unnatural, filthy, and unlawful. That's how God defines it. Now you

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could ask me, what do you think? And I'll say what does God say? It doesn't make any difference what I think. I'm a human being; I make mistakes. God doesn't make mistakes. That book has never changed and never will change. It defines that behavior and for someone to say, well, that's the way I was born. I was born that way. I can say I was born to look at a beautiful woman and to lust after that woman. Is it right for me to do that? No, it's not. I need to control my thoughts, my behaviors, and it's the same way with anybody else, any kind of sexuality...heterosexual, homosexual. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Smagacz? Senator Aguilar.

PETE SMAGACZ: Yes.

SENATOR AGUILAR: Does it say in the Bible somewhere that God hates homosexuals?

PETE SMAGACZ: It doesn't say God hates homosexuals. It says God hates sin and it clearly defines homosexuality as sin. He hates that behavior. He hates the behavior if I was an adulterer, He hates that behavior.

SENATOR AGUILAR: He also forgives, doesn't He?

PETE SMAGACZ: He certainly does, He's forgiven me plenty.

SENATOR AGUILAR: I'm having a hard time understanding how not passing this bill is going to change anybody's lifestyle.

PETE SMAGACZ: You are affirming...

SENATOR AGUILAR: Speaking specifically, I'm a homosexual.

PETE SMAGACZ: You are...

SENATOR AGUILAR: Do you think...are you saying and trying to convince us that if we do not pass this bill that maybe they will change. Is that what you're saying?

PETE SMAGACZ: If we do not pass this bill. I'm saying there is agenda larger than this bill and this bill is one

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step along that agenda to affirm the sin of homosexuality. And this would be a mistake to do that. You need to say no, we're not going to legitimize it. We're not going to affirm it. One step at a time or miles at a time and that's what this is doing. This is affirming that behavior, this particular step today. What will it be next year? What will it be...twenty years ago people would probably be shaking their heads to think that this is where we're at right now. I believe my mom and dad would be saying, what are they debating down there? I can't believe it. Here we are today. Where are we going to be 20 years from now? Where are we going to be five years from now, legitimizing pedophilia? I certainly hope so. I'm a grandfather of two and I don't want that happening.

SENATOR AGUILAR: And I think it's a sin to tell somebody if they're a law-abiding person that they can't live in a specific house if they can afford to live there.

PETE SMAGACZ: If I was a Christian and I owned an apartment complex, God gave me that complex. Everything I have, I'm a steward of what God has given me and if He has given me and I have worked for that complex I believe I'm a good steward of that. I need to honor Him and if the Bible says that's sinful behavior, I cannot abide by allowing them to rent that apartment any more than I would an unmarried couple. They came to rent from me and they're an unmarried man and woman, I would not rent to them because that's...I would witness to them that what they're doing is wrong but I would not legitimize what they're doing. I would not affirm that.

SENATOR AGUILAR: Thank you.

PETE SMAGACZ: You're welcome.

SENATOR BOURNE: Further questions? Seeing none, thank you.

PETE SMAGACZ: Thank you.

SENATOR BOURNE: Further testifiers in opposition? Are there any neutral testifiers? Closing is waived. That will conclude the hearing on LB 50. The committee will take a ten-minute recess.

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SENATOR BOURNE: (inaudible) resume. Senator Flood to open on LB 409.

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SENATOR FLOOD: (Exhibit 19) Thank you, Chairman Bourne, members of the committee. My name is Mike Flood, F-l-o-o-d, and I represent the 19th Legislative District. And I promise you there will not be that many people that want to talk about this subject. I'm here today to introduce LB 409. In the last few years the use of durable powers of attorney for business and healthcare have grown rapidly largely because of their use as a simple substitute for a guardian or conservatorship in cases where the principal or also known as the ward later becomes unable to handle his or her affairs. LB 409 has an impact in several areas affecting powers of attorney as well as matters of guardianship or conservatorship. The original statute being amended by this legislation was enacted back in 1879 to address the then existing problem arising from the ownership of most marital property in one spouse's, usually the husband's name. Its intent was to make sure that the family home could not be sold without the other spouse's knowledge and consent. In the old days if a husband and his wife weren't getting along, he could go downtown, sell the house, get out of town, and she would be sitting on property that had been sold out from underneath her with nowhere to live. In time, it became a principal in the minds of some members of the bar that a homestead deed needed to be a single document physically signed by both parties. This approach to homestead deeds makes it impossible for either party to convey through an attorney in fact. The impact of this was felt during World War II when many men and women were away from home and unable to sign documents of any kind. In anticipation of this problem they had left the powers of attorney with their spouses. It may be felt again now when many married personnel are in the Middle East. LB 409 is intended to change this impact by clearly making it possible for homesteads to be conveyed through attorneys in fact. The second impact of this bill is in the area of guardianship and conservatorship. The original statute took into account the fact that statutes of that time did not allow for the conveyance of property by a nonowning spouse

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in cases where the nonowning spouse was not competent. Most of the language in the existing Section 40-104 deals with this subject. A statute dealing with conveyances by nonowning incompetent spouses was enacted back in 1907 rendering obsolete the language of Section 40-104 in this regard. The Nebraska Probate Code adopted back in 1977 also makes this language unnecessary. Therefore, the amendment proposed by LB 409 eliminates this language and replaces it with authorization for guardians and conservators as well as attorneys, in fact, to execute homestead deeds on behalf of disabled or protected persons. I would encourage you to support the bill and I'd be happy to answer any questions.

SENATOR BOURNE: Thank you, Senator Friend (sic). Are there questions for Senator Friend? (sic) I'm...(laughter) all right, I'm moving these guys. Every day it gets worse.

SENATOR FRIEND: I'll move (inaudible)...

SENATOR BOURNE: Senator Flood...

SENATOR FRIEND: Ernie's not here. I'll...

SENATOR BOURNE: ...Senator Flood, thank you. Are there questions for Senator Flood?

SENATOR FOLEY: What's your name? (laughter)

SENATOR BOURNE: Well, you need to ask me that.

SENATOR FRIEND: Could you state your name for the record?

AGUILAR: Yeah, it's really going to help to move him over there by Foley (laughter).

SENATOR BOURNE: In your opening, you did say Senator Friend so that's what the confusion was.

SENATOR FLOOD: That depends on how you want to vote I guess (laughter).

SENATOR BOURNE: Well, in your opening you did say Senator Friend so that's what the confusion was.

SENATOR FLOOD: Spelled it Flood but I said Friend.

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SENATOR BOURNE: (Laugh) Are there questions? Senator Flood, I'm trying to get a sense of exactly what you're driving at here. What is...give me a real live scenario where this would come into play, this statute, if LB 409 passed, give me a real life, how this would work.

SENATOR FLOOD: Let's say Senator Friend and his wife are going along merrily. He gets called up for active service and gets called to Iraq. And while he's serving in Iraq they decide over the phone or whatever that they're going to buy a new house. And before he left he gave a power of attorney to his wife to sign bills and do business on his behalf and any power of attorney currently in this state would probably give him the power to buy and sell real estate.

SENATOR BOURNE: Would give his wife the power to do that.

SENATOR FLOOD: Yes.

SENATOR BOURNE: Okay.

SENATOR FLOOD: And so she could under the power of attorney in this statute legitimately sell their current marital home and buy a new one. And I think you're going to hear one testifier today that says, that's happening right now even though it flies in the face of the statute from the late 1800s. It happens now where they give these people the authority as long as they have a valid power of attorney or you're actually someone's conservator. And they have to allow it as a practice so that commerce can go forward. This cleans that statute up.

SENATOR BOURNE: It makes clear that it's allowed.

SENATOR FLOOD: It makes clear that it's allowed.

SENATOR BOURNE: But it's not designed to protect Senator Friend from his spouse fraudulently selling the home.

SENATOR FLOOD: No. If she sells the home, doesn't have a power of attorney, no land title agent would give you insurance for that sale because there was never a power of attorney and she was never named his conservator and he was

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not her ward.

SENATOR BOURNE: So now instead of Senator Friend just giving the power of attorney to his wife there's another step?

SENATOR FLOOD: No, just...this just would recognize the power of attorney as a valid instrument to help his wife make that decision. What's frustrating about this is, it's happening the way I want it to right now except for the fact that we've got this statute that's sitting there from 1879 that gets in the way. Back in 1879, the reason they said you had to have your wife sign was because the husband was usually selling the property without her. And that protection remains in place. The statute right now says husband and wife shall sign.

SENATOR BOURNE: Okay, but there's an "and" here. It says, operating in accordance with the provisions of the probate code and may also be conveyed or encumbered by an attorney in fact; that's the power of attorney.

SENATOR FLOOD: Um-hum.

SENATOR BOURNE: Appointed by and acting on behalf of either spouse under any power of attorney. So the attorney-in-fact language versus the power of attorney?

SENATOR FLOOD: Attorney-in-fact is essentially a power of attorney. If you have a power of attorney and I act under the terms of the power of attorney, I'm acting as an attorney-in-fact.

SENATOR BOURNE: Understood. Fair enough. Further questions for Senator Friend (sic)? Senator Aguilar.

SENATOR AGUILAR: Just a comment. It is happening now. My wife bought a house while I was serving in the Legislature 90 miles away (laughter).

SENATOR FLOOD: Do you need legal representation, Senator Aguilar? (laughter)

SENATOR AGUILAR: Could be (laugh).

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SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: First testifier in support?

JIM LAMPHERE: (Exhibit 21) Thank you, Senator Bourne. My name is Jim Lamphere and I can answer your question, Senator Aguilar. Lamphere is L-a-m-p-h-e-r-e. I'm here on behalf of two organizations. One is the Nebraska Land Title Association which is who I wrote my comments for and then I'm also...sit on the bar association committee, the Real Estate Practice Committee that generated this original proposal. It came from John Hansen who's a long-time practitioner out of McCook. Senator Flood stole my story about the genesis of this statute. It really did come from the old homestead days when husbands would walk off the property, sell the property out from under a wife and then get on a train and go east. In truth, this protection is needed and should remain intact to some degree. The problem is, this is a 19th century statute and we're in the 21st century, and it needs to be brought up to speed. There are multiple situations, military being the best example of where one spouse is unavailable for extended periods of time and commerce needs to continue while that spouse is gone. This statute would allow two circumstances to occur. One being the sale or purchase of property by use of powers of attorneys either between spouses or to third parties. The other and maybe even more common situation is borrowing funds, home equity loans or any sort of loan that's secured by a deed of trust. Those are required under this statute to be executed by both spouses. This would allow that to be done through power of attorney as opposed to having both parties present. There are numerous situations where both parties cannot be present for commerce, for military service, for family reasons, and this just eases that burden. In fact, powers of attorney are being used. They are being done contrary to the statute. They are being done based on our underwriters' assertion that this is an archaic and unenforceable statute at this point. And I would submit that if you have an archaic and unenforceable statute it should be changed to conform to existing practices. This will bring Nebraska law into conformance with other statutes throughout the country. I'll stand for any questions.

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SENATOR BOURNE: Thank you. Are there questions for Mr. Lamphere? Mr. Lamphere, does the power of attorney now have to specifically state that it extends to selling real property?

JIM LAMPHERE: Yes. To be acceptable, there are two requirements. One is that it needs to specifically grant the power of sale to the attorney-in-fact and it also needs to contain a legal description for recording purposes. It needs to be filed with the register of deeds for the county in which that property is going to be sold. And so it needs to specifically grant, not for that specific piece of property, but it needs to be fileable against that and indexed in the records.

SENATOR BOURNE: Okay. So if a power of attorney is drafted in the situation where Senator Friend goes overseas. That would be, if it did not specifically state and the right or the power to sell and acquire property, it wouldn't...it would be invalid for that purpose.

JIM LAMPHERE: That's correct.

SENATOR BOURNE: Okay. Further questions? Thank you.

JIM LAMPHERE: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Flood waives closing. That will conclude the hearing on LB 409. Senator Loudon to open on LB 617.

LB 617

SENATOR LOUDEN: Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is LeRoy Loudon and I represent the 49th Legislative District and the last name is spelled L-o-u-d-e-n. I'm here to open on LB 617, a limit liability for agri-tourism and LB 617 has two purposes. First, it is intended to help beginning or small scale businesses that derive income from the use of private property for outdoor recreation. It is limited to businesses that generate less than \$15,000 annually from the use of land for recreational purposes. Farmers and ranchers

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in Nebraska would like to augment their primary livelihood through the recreational use of their land. The state's demographics continue to change and economic activity becomes evermore critical to the rural areas of the state. People are becoming aware that urbanites are willing to pay for outdoor recreation on private land. Activities such as hiking, fishing, hunting, using all-terrain vehicle trails, dirt bike facilities, bird watching may allow rural and landowners to supplement their income. However, the cost of liability insurance is sometimes so high that it would exceed any income that might be derived from a small scale outdoor recreation business. Consequently, landowners do not develop the economic potential for their property. That is why I've introduced LB 617. If liability can be limited for the small scale and beginning operators it is likely that their liability insurance costs would decrease. If an operation derives more than \$15,000 annually it should be able to cover the cost of the higher insurance premiums. LB 617 does not limit in any way any liability which otherwise exists for willful or malicious failure to guard or warrant against a dangerous condition, use, structure, or activity or for injuries suffered. The second purpose of LB 617 is to replace language deemed unconstitutional and severable in a 1999 Nebraska court case, Teters v. Scottsbluff School District. That language shown as stricken matter on page 2, lines 23 and 25, and in LB 3, a Revisor's bill on final reading this session strikes this same language. The Nebraska Department of Economic Development would like to replace that language and has suggested the language that appears in lines 11 and 14 on page 2 of LB 617. I will not speak to that specific language because I believe there will be representatives from that department who are supposed to be here today to address that matter. So with that, I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Senator Loudon? Senator Aguilar. (See also Exhibits 22, 23)

SENATOR AGUILAR: Yeah, Senator Loudon, I think this is a great economic development tool you have here. Would you consider also hunting and fishing on your land the same?

SENATOR LOUDON: I think that's...

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SENATOR AGUILAR: As recreational as well?

SENATOR LOUDEN: Yeah, yeah.

SENATOR AGUILAR: Yeah. I just know the demand for that from urbanites is fantastic. Thank you for bringing this bill forward (inaudible).

SENATOR LOUDEN: Okay. Thank you.

SENATOR BOURNE: Further questions? Seeing none, can I have a show of hands of those here to testify in support? I see three. Those in opposition? I see one. Those neutral? I see one. First testifier in support, please.

DAN CURRAN: (Exhibit 24) I have some testimony. Thank you, Senator Bourne. My name is Dan Curran, C-u-r-r-a-n. I am the director for the Division of Travel and Tourism under the Nebraska Department of Economic Development. The Nebraska Department of Economic Development supports LB 617. We think this bill would be an important stimulus for increasing the amount of privately held land being made available for outdoor recreation and in doing so would benefit both recreation users and landowners. Travel and tourism is a growing industry in Nebraska that offers considerable potential for improving rural economic development. Travelers are increasingly wanting to recreate on farms and ranches where they can engage in horseback riding, wildlife watching, hunting, fishing, and many other outdoor recreation pursuits. And landowners of farms and ranches are increasingly recognizing that the growing demand for outdoor recreation on their properties can be an important source of income to go along with traditional revenues earned from farming and ranching. In addition, compared to many other states, Nebraska has only a small amount of federal and other public land available for outdoor recreation. Over 95 percent of the state's land area is privately held so both supply and demand conditions favor helping increase the availability of privately owned land for recreation purposes. But a worrisome problem for landowners interested in earning income by charging for outdoor recreation is liability risk. Liability concerns have led many landowners to restrict public access to their land or if they allow it, to not charge for that access because they realize that any liability protection they may

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have is jeopardized when they have charges for land use. LB 617 offers a way to encourage more landowners in Nebraska to charge fees for outdoor recreation on their properties by limiting their liability. The liability limit of \$15,000 in annual charges is especially appropriate for the farmer or rancher who seeks supplemental income from outdoor recreation. And in all cases, liability will not be limited when there is willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. Another aspect of LB 617 is to replace portions of Nebraska's existing Recreation Liability Act that the Nebraska Supreme Court earlier declared void due to vagueness. The law no longer specifically limits liability for a landowner when he or she has a leasing arrangement with the state of Nebraska for recreation purposes. For that reason, LB 617 includes provisions to limit liability for landowner leasing to the state for recreation purposes regardless of the total amount he or she collects from those leasing arrangements. Another bill this session, LB 620, also addresses this issue. In summary, we believe that LB 617 is an important bill for encouraging more outdoor recreation and tourism in Nebraska particularly in rural areas. More landowners would be willing to allow recreation on their properties and charge for it if liability risk is reduced and persons seeking to participate in outdoor recreation in Nebraska would find more choices. And if you guys promise to go easy on me, I can take questions.

SENATOR BOURNE: Oh, we don't make promises (laugh). Are there questions for Mr. Curran? Mr. Curran, how much is liability coverage that a person with a ranch that allowed pheasant hunting?

DAN CURRAN: You know, that is something, I can't get you an amount. I mean, it's just something that...I think when you get into outdoor recreation and you look into ag tourism and tourism in general, what I have found from the people that I have spoken to or the places that I have gone to is that it varies so much that each policy gets to be very individualized because, I mean, if you allow people on your land to pick fruit or, you know, Vallas pumpkin patch or something like that, all the way to guided hunting, star gazing, horseback riding. It depends on the lay of your land, where you're going to have people. And so you don't get just a general summary of that kind of a thing. I

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haven't been able to find something that anybody's willing to just say it should be around this much money.

SENATOR BOURNE: Thank you. Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. Curran, give me an example. I mean, I'm on Senator Louden's ranch and I got my buddy holding, you know, my shotgun and I'm trying to climb over a barbwire fence, I've ripped my leg open and I've got nerve damage. And I'm going to sue Senator Louden? I mean, these things are happening or they could happen.

DAN CURRAN: Those things, yeah, they could happen. I mean, it's...like I said, on this bill we don't want to remove anything where there's willful or malicious failure to guard against or warn against a danger that's on the land. But understanding that if you participate in outdoor recreation that there's a certain amount...

SENATOR FRIEND: So he's got a well that's uncovered or something and I fall down in there while I'm hunting and I'm lost for days. And then they find me. I'm really thin (laughter).

DAN CURRAN: (laugh) I think if it was...

SENATOR FRIEND: Months, okay (laughter).

DAN CURRAN: If it was willful or malicious, I don't think it would be covered on this though.

SENATOR FRIEND: Well, I mean, if my wife...if I wasn't around for months, I mean, is it worth more than...okay. Well, I understand. I'm just trying to...is that worth \$15,000? Maybe not to my wife. I understand. I guess what I'm trying to establish is, and I could ask Senator Louden if he chooses to close. I mean, are there folks out there, you know, looking for this? I mean, are we worried that it's something that could happen or is it something going on now? I guess that's what I'm trying to establish.

DAN CURRAN: I think that the problem as we see it from the phone calls that come into my office are the people that are having trouble getting into this, to have supplemental

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income and I think this bill addresses more the small businesses in this, the people who are looking for supplemental income to farms and ranches. And for the people that we talk to on this, it's more...as they're having trouble finding access to insurance and having trouble covering the cost because I don't think that they know if they're going to be able to have \$15,000 in income or \$200 in income when you start into these things. And if an insurance rate is starting somebody off at a much higher premium than that then it prohibits them from getting into this business in general.

SENATOR FRIEND: Yeah, I understand. Thanks.

SENATOR BOURNE: Further questions? Just to clarify, it's the entity that receives more than \$15,000. The way it's drafted it would absolutely eliminate liability for an injury suffered if that person makes less than \$15,000?

DAN CURRAN: Yeah. With the provision that in all cases liability will not be limited when there is willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

SENATOR BOURNE: That's how it's intended to be drafted?

DAN CURRAN: And that's...

SENATOR BOURNE: That both elements would apply?

DAN CURRAN: ...I believe that's in there. That's within that bill, yes.

SENATOR BOURNE: Okay. Further questions? Seeing none, thank you. Next testifier in support?

LORA YOUNG: (Exhibit 25) Good afternoon, Senator Bourne, committee members. My name is Lora Young. I'm with the Nebraska Travel Association. That's spelled L-o-r-a Y-o-u-n-g. NETA is comprised of both public and private attractions, restaurants, lodging facilities, outfitters, chamber of commerce, and convention and visitors bureaus. Our organization truly represents a cross section of the tourism industry in Nebraska. We stand in full support of this legislation. The farm and ranch industry has taken an

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economic hit due to the drought and this is one way to supplement their income and reduce fears regarding liability. There is a growing demand for outdoor recreation and due to a lack of public land, there exists an opportunity for private landowners to meet that need. This is one way in which the Legislature can help the landowners remain on their farm or ranch and support the growing tourism industry. We would appreciate your efforts to see this quickly out of committee and through the process to becoming law. We want to thank Senator Loudon for introducing this bill and for his interest in tourism.

SENATOR BOURNE: Thank you. Questions for Ms. Young? Seeing none, thank you. Next testifier in support?

SHELLYN SANDS: (Exhibit 26) Good afternoon, Senator Bourne and members of the committee. My name is Shellyn Sands. That's S-h-e-l-l-y-n. Sands is S-a-n-d-s. I am here to represent the Nebraska Association of Convention and Visitors Bureaus. We are a statewide association of Convention and Visitors Bureaus. We fully support LB 617. Nebraska offers a wide range of recreational opportunities from hunting and fishing to hiking and guest ranches. LB 617 allows Nebraska landowners the opportunity to supplement income with recreational uses of their land. LB 16 (sic) is an economic development opportunity for rural Nebraska. We support the goals of the Division of Travel and Tourism and of this bill. We believe the bill will help grow recreation and tourism in Nebraska and we encourage the Legislature to continue looking for ways to further tourism in Nebraska where the possibilities are endless. I'll add just kind of a personal note on this. This bill would affect my dad who farms in northeast Nebraska. For the last few years he has had a corn maze which he allows kids' groups and college students and anybody to come out and run through. However, with this bill passing he would be able to charge people using that corn maze and whatever other fun farm things he's got going on to supplement his income as he is very close to retirement age and will be needing to pay for things like health insurance and things like that for himself.

SENATOR BOURNE: Thank you.

SHELLYN SANDS: Thank you.

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SENATOR BOURNE: Questions for Ms. Sands? Seeing none, thank you. Appreciate your testimony. Other testifiers in support? Testifiers in opposition?

JOHN LINDSAY: Senator Bourne, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys in opposition to LB 617. As Senator Louden mentioned, I believe, or maybe it was the first testifier mentioned that part of what this seeks to do is to reverse a Supreme Court decision in Teters v. Scottsbluff Schools that held a part of the existing law unconstitutional. And part of the bill does that but as was also mentioned it goes well beyond that and may have, I think, unforeseen or unintended consequences. First, looking at that Teters v. Scottsbluff case, it's not hunting or fishing or some of the recreational activities that have been mentioned. What it was was a parent of a school child who attending a camp with her child was sliding down a cable, holding onto a cable and fell 20 feet because the stitching on that cable had not been...on the apparatus that held to the cable had not been inspected and the stitching was coming out. She fell and was injured. So when we talk about what types of recreation are covered, understand this covers all types of recreation. It is not limited to those that we may be intending. It also is not limited to agricultural property. It extends to property which is leased. In that same case, it was found that the school which went to this location to use that camp, that what they paid for that charge to use the facility was, in fact, they held that that was a rental payment. It was not a charge for the land. The second thing to mention and I think Senator Friend touched on it. The standard that we're applying is willful or malicious. That is a very high standard. It basically means you can't intend to hurt someone but everything up to that is pretty much okay. And so it really lessens the safety element for those who are going to be using the land. The final thing I would mention as well is some of the unintended consequences and that is a question of right now there's a lot of things, a lot of farmers, for example, allow their land to be used without charge for hunting purposes or for fishing purposes. Is this going to have an effect of making all hunters and fishers starting to having to pay for whatever the use of the land. And is that, in fact, going to have a downward

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pressure on tourism? The trial attorneys, of course, the first and foremost principle is that when we immunize people from liability we encourage a lack of due care and that's exactly what the bill says is that you do not have to exercise due care in these circumstances. We would urge that the bill be indefinitely postponed.

SENATOR BOURNE: Thank you. Are there questions for Mr. Lindsay? Seeing none, thank you. Next testifier in opposition? First testifier in a neutral capacity? I had to make sure there were no other opponents.

JOE HERROD: Good afternoon, Senator Bourne and members of the committee. My name is Joe Herrod, H-e-r-r-o-d. I'm here representing the Nebraska Council of Sportsmen's Clubs. We have about 125 clubs and literally tens of thousands of members. The reasons that Mark Brohman will bring you on LB 620 makes it, you know, that I really don't need to address, I believe, that part of LB 617. That's kind of another matter but the reason that I wanted to give a little bit of neutral testimony on this is that I personally own a cattle ranch in western Nebraska. And I understand the liability laws out there because under the present situation if somebody comes to me and asks for permission and I tell them to go ahead, I'm limited from liability. And I do try to tell them about the old cistern up on the hill and some of the other things but I'm protected. Now a few years ago, we had an entrepreneur in that area and well known to a lot of you, Tim Holzfast who owns Ole's Big Game Lounge. And Tim went into the business of leasing places to hunt and then taking clients in to stay at his lodge or staying at his other facility and bringing them in to hunt. And Tim and I have been friends for many years and he came to me and said that, Joe, he says, what do you have going on for turkey hunting out there? And I said, well, really not a lot. And he says, well, I'd like to take some people over there turkey hunting and he made an arrangement with me. And I said, well, what about the limit? Oh, no problem, no problem whatsoever. And the next thing I knew, I got a thing in the mail which was a blanket policy covering anything that happened on my ground, that anything that had to do with his organization. And so as far as neutral testimony, I thought I should come up here and say, you know, there are ways to take care of this, obviously. I understand in a start-up business when somebody doesn't know

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whether they're going to make any money at all and they go out and they don't know what it's going to be in and they go to look at the insurance policy. That's a problem but still that's the kind of thing that every businessman really needs to do. He needs to look at that and I would also say that among our sportsmen's group there was some opposition to this bill. In fact, they voted to oppose it but I have a little bit of latitude to come up here and say what I want to say. And the reason that they would oppose it is that there's already a lack of hunting ground. It's continually being leased up by the haves and the have-nots or having less opportunity to have places to hunt. And so this really makes it easy for somebody just to lease their place out to a specific group of individuals and the ordinary guy, you know, is kind of left out. So I see she's pushing buttons and I'm color-blind so what, it says stop so (laugh).

SENATOR BOURNE: Thank you. Are there questions for Mr. Herrod? Senator Aguilar.

SENATOR AGUILAR: Yeah. That last statement you just made. I'm kind of curious now. This would allow for more and more opportunities. Wouldn't that make more and more opportunities for the working guy as well?

JOE HERROD: No. No, I don't think so. I think what you'd have here, the common situation on river ground and I have river ground is it leases for well, \$5,000, \$6,000 a mile. And once somebody comes in and leases that river ground for hunting, everybody that used to hunt there is out. We had a situation, there was three miles of river just west of me. Guys from Colorado came in and leased it out and I had about a dozen guys come down to my place and said, Joe, we lost our spot. We always hunted up there, and you know, (laugh) I couldn't accommodate them all. And so that's kind of what happens. It's the few guys with the money get a spot and they kind of keep it to themselves and it keeps a lot of other people out. So that's kind of where we have some of our membership which is kind of the rank and file. We've been described as the Joe six-pack people (laugh) or whatever. So this kind of works against them, this kind of leasing operation. And, you know, we're in support of LB 620 because we think that helps the others and you don't have to listen to me again if I can slip that in. But we think that the LB 620 takes care of the liability issue

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that's a Supreme Court ruling and everything. And I'll wait and...because I've got something else I'd like to say on that subject too as far as easements and things so.

SENATOR BOURNE: Well, you're welcome to come back on LB 620.

JOE HERROD: Okay, I'll come back.

SENATOR BOURNE: Further questions? Seeing none, thank you.

JOE HERROD: Thank you.

SENATOR BOURNE: Are there neutral testifiers? Senator Louden to close.

SENATOR LOUDEN: Thank you, Senator Bourne. I'll close and as George Coordsen used to say, I'll be brief and that didn't mean much (laughter). I guess to start with, Senator Friend's idea when he mentioned that he might go out there and get lost and not show up for a month. I was going to say, don't give your wife the power of attorney before you leave (laughter). Anyway, getting back to this bill here. This should really free up more land as Joe Herrod had just testified that people come in and lease up big blocks of land. And that is precisely what's happening because a local person can't just lease or let people come onto his property for a small fee. In the same area I have, there's a ranch to the south of me, there's over 35,000 acres that he leases out to a Colorado outfit. And when he does that, they pick up the liability; they do the whole thing and nobody else comes in and hunts there. There's over 40,000 acres to the north of me right there that they do the same thing. They lease this out to deer hunters from other states or wherever and there will be seven or eight deer hunters come in there or whatever there is and take care of it all. Nonetheless, if this bill or something like this came in there where we have our land. They come on for nothing and that sort of thing, and I have some of the neighbors that have oh, two or three sections at a time, pastures that they would probably let somebody come on and hunt there for 50 bucks that they don't necessarily know, it would...to me would free up more land for this type of hunting and fishing and AT, you know, trail rides and AT stuff. The liability insurance is really quite hard to

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come by when you're starting something like this because if you want to do horseback riding, as soon as you say horse, why the liability insurance goes up over the top. State of Nebraska is the only one that gets by with having horseback rides and doesn't have any liability insurance and that's up at Fort Robinson. So I think there's ways for this. LB 620, more or less, will be with land that belongs to the state and government. And when one of the testifiers against it said something about nothing, about the liability and malicious failure to guard or something like that. That's already in the statute. That's left over from the statutes when you do it for nothing. So I think that comes in the statutes that if you don't charge anybody anything it still doesn't relieve you from anything that would happen on there that would be dangerous or something. So whether you charge or not, you're still liable for that. With that, I'd ask you to advance this bill. I think this is something that will help most all the smaller ranch and landowners in the area so with that, any questions?

SENATOR BOURNE: Questions for Senator Louden? Senator Aguilar.

SENATOR AGUILAR: Yeah, if Senator Friend gets lost for two months on your property you should be able to charge him rent without liability (laughter).

SENATOR FRIEND: And I said you also charge me for the water I drink out of your well.

SENATOR LOUDEN: Yeah, while you're down there. Yeah (laughter).

SENATOR FRIEND: Yeah.

SENATOR BOURNE: Further questions? Seeing none, that will conclude the hearing on LB 617. Senator Schrock to open on LB 620. As Senator Schrock makes his way forward, would the proponents of the bill make their way to the on-deck area and sign in? Welcome.

LB 620

SENATOR SCHROCK: Chairman Bourne, members of the Judiciary

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Committee, it's the time of the day when things go a little faster. The purpose of LB 620 is to clarify the Recreational Liability Act and allow landowners receiving certain payments to still qualify within the act. It's my understanding due to a Supreme Court case ruling that we have some holes left out there due to the ruling, and this will try to clarify that. The specific language that was stricken is rental paid by a group, organization, corporation, or the state or federal government shall not be deemed a charge made by the owner of the land. The bill allows Natural Resource districts and the federal government to lease land for recreational purposes or wildlife benefits, and those recreational purposes could include hunting and fishing. This is currently permitted to be done by the state. It also allows groups, corporations, political subdivisions, and state and federal agencies to make habitat improvement payments for recreational purposes or wildlife benefits. Receiving those payments does not negate the protection for the landowner under the act. And, of course, the CRP payments and government payments can be rather large at times so that is the purpose of the bill. I would say you would use your time more productively if you would wait and have Mark Brohman from Game and Parks answer the questions but if you want to ask me something I will try.

SENATOR BOURNE: Thank you. Questions for Senator Schrock? Seeing none, thank you. First testifier in support?

MARK BROHMAN: Mr. Chairman and members, my name is Mark Brohman. That's B-r-o-h-m-a-n and I'm here today representing the Nebraska Game and Parks Commission and we want to thank Senator Schrock for bringing this bill about. We first heard about it when we saw that LB 3 was introduced and that was to strike some language that the Supreme Court found unconstitutional and that was mentioned by Mr. Lindsay earlier. One of the sentences that the Supreme Court said was Recreation Liability Act's definition of a charge was unconstitutionally vague so they wanted to know more about what is a charge, what is rental? And so they struck that line that Senator Schrock mentioned that is struck in LB 3 which is on Final Reading now. So we came in with LB 620 to try to rectify some of the things that we thought might be getting lost. And what we see is potentially getting lost is payments that landowners are receiving from a third party

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whether it's the federal government, state government, NRDs, or someone like that. It's not money coming in from the user. The bill that was previous to this was trying to allow someone to get out of some liability, but they're actually receiving. There's a customer relationship there, someone that's paying for an activity. In this case, you've got a landowner has a chunk of ground and they're receiving payments from the NRD, Game and Parks, the federal government. And there's a potential that that would be considered a payment even though the hunter is not paying it, it's coming in from another entity. So we wanted to clarify in the statutes. I'm going to give a couple of examples of the types of monies we're talking about. We think this is really for the public good and the public benefit and I handed out the Recreation Liability Act, the front and back of that sheet you'll see. That's actually the Recreation Liability Act, all the sections of law. Under the purpose of it, it says the purpose is to encourage landowners of land to make available to the public land and water areas for recreational purposes by eliminating their liability. And then if you go on and on the back of that sheet under 37-734 it talks about the landowner liability exceptions. And then down at that last line of 734 is what's been struck. Rental paid by a group, organization, corporation, or state, or federal government shall not be deemed a charge made by the owner of the land. So, in essence, a rental could kick someone out of the program. The types of payments that we're talking about in Nebraska are fairly substantive. Under the programs, under the federal government administered by the NRCS, the Natural Resource Conservation Service, we've got the EQIP which is the Environmental Quality Incentive Programs. Last year in Nebraska that was \$24 million and there were over 700,000 acres in that program. The WHIP, the Wildlife Habitat Incentive Program, last year there was \$570,000 9,000 acres. WRP was 100,000 acres. Hopefully, by the year 2007, WRAP 10,000 acres; over 9.5 million. These are all programs the federal government pays landowners to do habitat incentive and sometimes it includes access for recreation so it's not the hunter and the fisher, the bird watcher that are coming in and paying. It's the federal government, state of Nebraska, and the way we see what happened with the Supreme Court decision is the state of Nebraska was still covered but the federal government and other entities were taken out. So what we've asked in this bill, if you'll look at

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the actual language, and it's really repetitious. It's put in two sections of law because the Supreme Court said there's two sections of the statute and they don't agree with each other. So if you look in the green copy of the bill under 733 and under Section 734 we put the language, the Natural Resource District, the state, or the federal government for recreational purposes or wildlife benefits or receiving habitat improvement payments by any group, corporation, political subdivision, or state or federal government agency for recreational purposes or wildlife benefits. That would cover all the things we're talking about. Any monies that that landowner would be receiving would not be considered a payment by the user so we think it's imperative that LB 620 get passed because like I said, LB 3 is on Final Reading and will go through so we think this is the solution to get back to the purpose of that. I see I'm out of time but I'll answer any questions you might have. But really we're trying to cover benefits that the landowners would be getting from other sources.

SENATOR BOURNE: Are there questions for Mr. Brohman? Mr. Brohman, so, basically, what's happened is if Senator Friend has ground, I want to hunt on it. He has no liability. Now, then that court case struck that language, payments from other entities. So you're arguing that if Senator Friend gets a payment from you, the Game and Parks, to enhance his habitat that might constitute a payment which takes him out of the protection from the Recreation Liability Act.

MARK BROHMAN: Exactly, exactly.

SENATOR BOURNE: Okay. Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. I guess my question is, what constitutes a leasehold for the purposes of the Supreme Court? And I agree with what you're trying to do but do we necessarily have to go this route? Because if I rent my ground to Senator Friend, I would consider that a leasehold arrangement that binds my real estate and gives somebody else a property right to my real estate for whatever amount of time. Whereas, if I have my ground in CRP programs, that doesn't give anybody the right to come onto my property or to use my property for their benefit other than for the public policy needs of the state of

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Nebraska. Is there a difference?

MARK BROHMAN: Well, there's all kinds of payments. Some of them are for just habitat. Some actually include access including Game and Parks has a program that's called CRP map walk-in. If you've got land enrolled in the Conservation Reserve Program, Game and Parks will pay you an additional like a dollar an acre to allow the public to come on and it's posted. And we have it in our mapped books that says, here's an area you can hunt. The landowner agrees to it. There are other programs, the Pheasants Forever and Ducks Unlimited put payments in with federal payments to allow some public access. And so they're indirectly paying for public access, but some of the agreements are actually called leases by the federal government and by political subdivisions, NRDs, so they actually have an interest in the property. They don't always allow access to the public but in most instances they're doing some sort of habitat work. But there are some that do include access with the NRDs and with Game and Parks so we're trying to cover everything. We talked to the Attorney General's Office to say, do you think that if LB 3 goes through, do you think we would be protected in all these instances? And they said, it's clouded. This would clarify the payments from the federal government for habitat purposes and recreation, would allow you to stay in the Recreation Liability Act. So we're trying to just cover those landowners.

SENATOR FLOOD: Very helpful. Thank you.

MARK BROHMAN: Thank you.

SENATOR BOURNE: Thank you. Further questions? I guess it is getting late in the day. I read this to say that the payment has to come from the invitee and if they don't receive directly or indirectly, or if they don't receive money from the invitee then they're exempt from liability.

MARK BROHMAN: We had that discussion with the Attorney General's Office and they just said that it was clouded. That's the first read that I had was it would have to be a payment by a body using that property for that purpose. You know, in the Scottsbluff case it was a school district paid the Kiwanis Club to have that activity. But the person that got hurt didn't pay. They were a parent that came in and,

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of course, that's a different situation. It wasn't hunting and fishing but it was a recreational activity.

SENATOR BOURNE: Are there elsewhere in either our statute and the federal statute a definition of wildlife benefits or habitat improvement payments?

MARK BROHMAN: In the federal register they've got habitat improvement payments but I don't know about wildlife benefits.

SENATOR BOURNE: Is wildlife benefits...is that a payment from the Game and Parks?

MARK BROHMAN: It could be Game and Parks, by the federal government, by NRDs, and then we also do joint programs with Ducks Unlimited, Pheasants Forever. I think the term wildlife benefits would be fairly obvious. You know, there's people that say well, that's pretty, you know, hard definition to get your arms around. But I think most people would identify what a wildlife benefit is versus what's not.

SENATOR BOURNE: Are the entities that would provide payments for habitat enhancement limited to Nebraska Game and Parks, the federal...would it be Department of Ag or Interior or? Well, we can...I think there's another way to do this is all I'm suggesting that's more...

MARK BROHMAN: And we did put this bill in at the last minute because when we saw LB 3 come out and it was a bill that came through bill drafters, went right on to General File and there was no hearing, you know, we were kind of caught off-guard and tried to, you know, scurry to come up with something. And one thing I didn't mention is there's a federal program that Congressman Tom Osborne's pushing called the federal open field legislation and it really will provide money for access through the federal government, not only habitat but access. And so they're kind of concerned about that. Hagel and Nelson have signed onto the Senate side of that but it's a huge program and Nebraska might be the pilot study next year. And so we're just very worried. We want to try to get coverage so it's clear that these type of payments would not throw someone out of compliance.

SENATOR BOURNE: Further questions? Seeing none, thank you.

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MARK BROHMAN: Thank you.

SENATOR BOURNE: Other testifiers in support?

WES SHEETS: Good afternoon, Chairman Bourne, members of the committee. My name is Wes Sheets. That's spelled S-h-e-e-t-s. I'm here before you, thankfully, representing the Nebraska division of the Izaak Walton League. That's a group of basically outdoors hunters, fishermen type folks and constitute about 19 chapters across the state from Imperial up through Wayne. We're here in support of LB 620 because of the perception of the impact on properties open for public recreation of our renewable resources. We believe that that Recreation Liability Act is very important to remain intact to maintain opportunities for hunters and fishermen but particularly the opportunity for young people. I can speak as a person involved in a mentoring program, taking young people in the field to hunt and fish and I would not be able to do that if I were forced to pay for that opportunity of some particular landowner. So while we enjoy a very conclusive opportunity at this time, we wonder what would be the impact should we wind up having to force ourselves into paying for that access which then in turn would provide for the liability insurance for the landowner. So with those thoughts in mind, I would certainly urge you to make sure that the Recreation Liability Act does, in fact, provide those opportunities in the future. And I'm not an attorney so I would not want to answer any questions about the technical aspects of that bill but it seems to us that, you know, with the impact, the potential impact, of LB 3, we don't understand that. We would certainly like to not see the current existing law change from where it is now.

SENATOR BOURNE: Thank you. Are there questions for Mr. Sheets? We'll explore this a little bit. I mean, my sense is that the court has held the language that LB 3 is deleting from statute. They've held that void so it's of absolutely no bearing whatsoever. It offers you no protection at all so, anyway. But I understand exactly what you're trying to do and I agree with the concept of it. Further questions? Thank you. Further testifiers in support?

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JOE HERROD: Good afternoon again. My name is Joe Herrod, H-e-r-r-o-d. I'm still representing Nebraska Council of Sportsmen's Clubs. We're here in support and wish to thank Senator Schrock for not only this bill but for all of the many other things he's done for sportsmen and for Mark Brohman of making aware of a situation. And just to bring a little bit of a situation that kind of exists in this...I've for a long time been associated with Ducks Unlimited and, in fact, at one time I served on their national board of directors and I kind of know how that organization works. And right now in Nebraska, they're involved in spending \$16 million restoring wetlands in the state. And as part of the way they do that they'll oftentimes come into a landowner and that landowner they'll say, okay, we want an easement on your property. And we'll pay you to take that out of production. Now you still own the land and you have total control of it and you can still let people to go in there and hunt and do whatever you want to. Well, this situation might kind of cloud that issue if that guy said, well, Ducks Unlimited is paying me not to farm this ground, to make it a wetland. So if I'm getting paid and I let people in to hunt, where do I stand? And so we're just kind of...we'd just like you to work with this and clear this issue up because we don't want to see restoration of wetlands and other things slow down because people don't know what legal grounds they're on.

SENATOR BOURNE: Thank you. Questions for Mr. Herrod? Seeing none, thank you. Other testifiers in support? Testifiers in opposition?

JOHN LINDSAY: Senator Bourne and members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. First, I'd incorporate the testimony I gave on LB 617. A lot of it is applicable here as well. But I would take up...as I was listening to the testimony from the proponents, I think our concerns with the bill may not be concerns with where I'm gathering they're trying to head. It's more with the bill as written. So at the outset, I would say I'd be happy to try to work to resolve whatever concerns that we do have. They may not be in conflict. Part of our concern is first that when we talk about a hurry...I don't think there's this hurry because LB 3 is moving along. As Senator Bourne mentioned, that

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part of the Recreation Liability Act has been ineffective for the past six years since 1999 when the Supreme Court struck that down. It's as if that did not exist so what the Revisor bill is doing is just cleaning that up so that it's no longer actually in the statute. The big concern with the bill is that I think it goes maybe beyond what was intended and part of that is because some uncertainty or vagueness with the bill which, of course, by the way, leaves it open to the same result as was in Teters v. Scottsbluff Schools and that is that it could as well be held unconstitutional for vagueness. The problem is with as Senator Bourne touched on, on habitat improvement payments. What does that mean? And is it defined? Wildlife benefits, I believe, is the other one. What does that mean and is it defined? The fact that it is not defined poses some concern when we talk about in the bill it says, any group paying habitat improvement payments. And if it is not defined in the bill, any group could be Joe and five or six of his buddies get together and say, hey, we're going to pay you not to farm that land, and we get to use it and liability is now gone. Because any group is also undefined. Now with where I think, where I heard the proponents going, I think you could get there with some work and I don't think that's what the trial attorneys are trying to oppose. It's more the fact that I think the bill does need some work and we'd be happy to try to work with the committee on those and would ask the committee to hold the bill until the work is done.

SENATOR BOURNE: Thank you. Questions? Senator Lindsay, you're not opposed if the bill simply limited...you're not opposed to the concept of if somebody goes on somebody else's ground gratuitously that there's an immunity. So if it was changed so that it said that the payment had to come directly from the invitee or something along those lines, your organization wouldn't have an objection.

JOHN LINDSAY: I'm not quite tracking. The payment that, coming from, directly from the invitee?

SENATOR BOURNE: The proponents just want to clarify that a habitat enhancement payment does not take that landowner out of the immunities given to them in the Recreation Liability Act.

JOHN LINDSAY: Right.

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SENATOR BOURNE: So what I'm suggesting is if the bill is changed so that it says that it has to be a direct payment from the invitee to the landowner, your organization wouldn't have trouble in that regard.

JOHN LINDSAY: I think I see where you're going and I would agree that that would not be...if somebody is receiving CRP payments,...

SENATOR BOURNE: Yeah.

JOHN LINDSAY: ...that shouldn't take them out of the Recreation Liability Act. I think that that same kind of rationale I think could be extended outwards from there.

SENATOR BOURNE: I agree. Further questions? See none. Thank you, appreciate your testimony. Other testifiers in opposition? Testifiers neutral? Senator Schrock to close. Senator Schrock waives closing. That will conclude the hearing on LB 620 and will conclude the hearings for this afternoon.